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Convention on the Rights of the Child

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Committee on the Rights of the Child

Initial report submitted by Tonga under article 44 of the Convention, due in 1997*

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List of Common Abbreviations

BNPL	Basic Need Poverty Line
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSFT	Civil Society Forum of Tonga
CWL	Catholic Women's League
DFAT	Department of Foreign Affairs and Trade (Australia)
DSPD	Department of Social Protection and Disability
IE	Inclusive Education
MDG	Millennium Development Goals
MET	Ministry of Education and Training
MFAT	Ministry of Foreign Affairs and Trade (New Zealand)
MIA	MIA
MOH	Ministry of Health
MOP	Ministry of Police
MOJ	Ministry of Justice
NATA	Naunau 'o e 'Alamaite Tonga Association Inc.
NCCC	National Coordinating Committee for Children
NEMO	National Emergency Management Office
OTA	'Ofa Tui mo e 'Amanaki Disability Centre
RNPGAD	Revised National Policy on Gender and Development
SDG	Sustainable Development Goals
TELPF	Tonga Educational Lakalaka Policy Framework
TESP	Tonga Education Sector Project
TFHA	Tonga Family Health Association
THPF	Tonga Health Promotion Foundation
TNCWC	Tonga National Centre for Women and Children
TNYC	Tonga National Youth Congress
TRCS	Tonga Red Cross Society
TSDF II	Tonga Strategic Development Framework II
WAD	Women's Affairs Department
WCCC	Women and Children's Crisis Centre

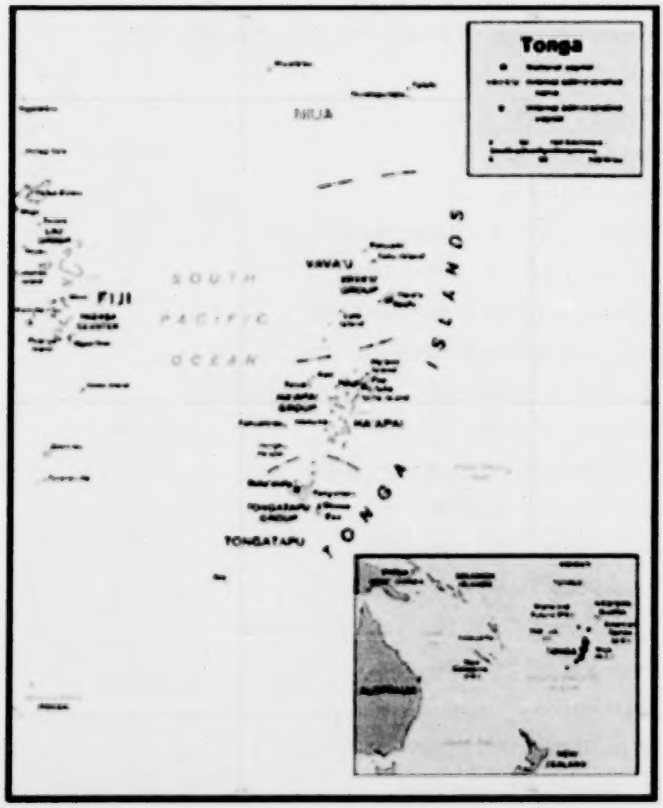
Introduction

The Land

1. The Kingdom of Tonga consists of approximately 170 islands scattered across an area of the central Pacific Ocean to the east of Fiji. The present territorial boundary covers some 360,700 square kilometres of ocean, although the Exclusive Economic Zone has not as yet been officially declared.

2. The 36 inhabited islands cover 670 square kilometres out of a total land area of approximately 750 square kilometres. Ninety-three percent of the population live on the main island groups of Tongatapu, Ha'apai and Vava'u.

3. The three main island groups are Tongatapu (including the large islands of Tongatapu and 'Eua), Ha'apai and Vava'u. The Niuas is a remote group of volcanic islands several hundred kilometres north of Vava'u. The nation's capital, Nuku'alofa, is located on the largest island, Tongatapu.



Climate

4. Tonga's warm, moist, semi-tropical climate is conducive to agricultural production and enables people to live comfortably without costly heating or winter clothing. The clay soil of Tongatapu is very fertile and requires few inputs to produce high crop yields. As most of the islands are coral in origin, Tonga has no commercial mineral resources and the nation's wealth is derived from the people, the land and the sea.

The People

5. Tonga's population in 2016 was 100,651 living in 18,005 households.[1]

6. Tonga's demographic profile is characterised by:

- Uneven distribution of the population amongst the Island groups;
- High migration (estimated net migration rate -2.0 in 2011);
- Mortality 21.5 per 1000 live births and fertility 3.8 per women in age bearing age; and
- A life expectancy of 65 and 69 male and female respectively.[2]

7. The interaction of these processes has led to a declining population growth rate from 1.2% in the 2011Census to -2.5% in the 2016 Census. Population has dropped by 0.5% per year for the past five years.

8. The working-age population has remained the same for 2011 and 2016 at 55% with a 1% increase of those under the age of 15. The largest five-year cohort in 2016 was under 5 years old, which comprised 12.4%.

9. It is estimated that there are as many Tongans living overseas as there are living in Tonga. There are large communities living in New Zealand, Australia and the United States of America who contribute to the economy through remittances.

10. In 2016, 23% of the total population resided in urban Nuku'alofa, and 35% in the greater Nuku'alofa area. Growth rates for all island divisions dropped since 2011. Tongatapu being the only group experiencing net growth.

11. In 2016, there were 43,207 children (under the age of 18) comprising 45% of the total population. Twenty-three percent (23%) were urban and 77% rural.

12. Tongan society is almost universally Christian. The church has a profound influence on community attitudes and behaviour and on the everyday life of individuals, as well as providing a ceremonial focus for community activity. People usually attend church services at least weekly, and church social activities and obligations are an important part of family life.

13. Most Tongans live comfortably by developing country standards, and poverty has generally not been regarded as a community concern. Many household incomes are supplemented by remittances and the extended family network ensures that basic needs are met for most of the population.

14. However, recent studies using a measure of the Basic Needs Poverty Line (BNPL) indicates that, for the HIES surveys of 2001–2009, the percentage of people living below the poverty line has grown from 16.2% to 22.5% affecting mostly the landless, unemployed, widows, single mothers, orphans, disabled, elderly, settlers and "lazy" people.[3]

15. The number of workers participating in overseas labour mobility programs has increased from 1,762 in 2010 to 2,772 in 2013 generating around $60 million in income. The number of female participants is increasing. In 2016–17, there were 2,690 seasonal workers in Australia alone[4]. The social drawback has been the long absence of a parent or spouse.

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[1] Government of Tonga. Tonga Statistics Department. Tonga 2016 Census of Population and Housing Volume 1: Basic Tables and Administrative Report. (Tonga Statistics Department. Nuku'alofa, 2017) 10.

[2] Government of Tonga. Tonga Statistics Department. Health Statistics. Site accessed October 2017. <http://tonga.prism.spc.int/social/health>.

[3] Abbot, D. Final Report. Tonga. Analysis of the 2009 Household Income and Expenditure Survey. Report on the Estimate of Basic-Needs Poverty Lines, and the Incidence and Characteristics of Hardship and Basic-Needs Poverty in Tonga. (UNDP. Suva, 2017).

[4] Personal Communication. Ms Kolotia Fotu. Deputy CEO. Ministry of Commerce, Consumer Trade, Innovation and Labour, October 2017.

16. In 2013, Tonga's HDI was calculated by UNDP at 0.735. This was within the High Human Development group and well above the average for Small Developing Islands.[5] However, since life expectancy has fallen significantly due to the result of the epidemic of NCDs, Tonga's HDI is expected to fall.[6]

17. Tongan society is very homogenous, with one language, Tongan, spoken throughout the Kingdom. English is also widely spoken and is the main language of government and commerce. Of those aged 5 and above, 88% had no difficulty reading or writing in Tongan and 51% had no difficulty reading or writing in English.[7]

The Government

18. Tonga is governed by a Constitutional monarchy, under King Tupou VI. The Government is composed of three branches: the Executive (Cabinet); the Legislative Assembly; and the Judiciary.

19. The first election under the 2010 constitution reform was held in November 2010. Tongan citizens are now able to elect a majority (17 out of a possible 30) of representatives. Nobles elect nine noble representatives. Article 51 of the *Constitution of Tonga (Amendment) Act 2010* allows the Prime Minister to nominate, and the King to appoint, up to four extra Cabinet members from outside the Legislative Assembly.[8] These 30 members constitute the Legislative Assembly.

20. Tonga has no municipal councils and the capital, Nuku'alofa, is administered directly by the central government. Elected town and district officers represent government at the local level and have jurisdiction over a group of villages. The larger island groups, Ha'apai and Vava'u, have governors who are appointed by His Majesty on the recommendation of the Prime Minister and have delegated responsibilities in the overall administration and reporting of outer island affairs.

21. By law, town and district officers have a variety of administrative and other duties, such as record-keeping of births and deaths, organising community meetings and attending official, traditional and ceremonial functions of government.

The Economy

22. The GDP growth rate grew by 2.1% in 2013–14 to US$434.4 million in 2014–15. The main primary sectors contributing to growth were agriculture, forestry and fisheries making up 18% of total GDP. Tonga's nominal GDP per capita in 2013–14 was about US$3,800, an increase from US$1,780 in 2003–04.

23. Agriculture alone accounted for 15% of GDP in 2013–14 with agricultural exports valued at $12 million (11% of earnings).[9]

24. Despite the healthy performance of the agricultural sector, Tonga's ability to sustain economic growth is constrained by its relatively small endowment of land and natural resources, vulnerability to natural disasters, substantial dependence on imports, relative isolation from major markets, and the high cost of public administration and infrastructure, including transportation and communication.

25. Personal remittances sent to families by Tongans working overseas make an important contribution to the Tongan economy. Around 61% per cent of households

[5] Government of Tonga. Ministry of Finance and National Planning. Tonga Strategic Development Framework II 2015–2025. (MOFNP, Nuku'alofa, May 2015) 32.

[6] Ibid 32.

[7] Government of Tonga. Tonga Statistics Department 99.

[8] Constitution of Tonga (Amendment) Act 2010. S 51(2) a.

[9] Government of Tonga. Ministry of Finance and National Planning. Tonga. Millennium Development Goals Final Report. (MOFNP, Nuku'alofa, 2015).

received remittances in 2016. In 2009, cash remittances comprised 23% of household income at a value of $51,618,000.[10]

26. Remittances, together with donor-funded development assistance, enable Tonga to finance a relatively high level of imports without significant overseas borrowing. In 2013, remittances were running at over 20% of GDP bringing the GNI to about US$4,500.[11]

27. Tonga's economy has been propped by grants and soft-loan funding. Budget support has contributed to 5% of GDP or 20% of domestic revenue. This has been necessary to maintain economic activity, service delivery and a higher quality of life. It has also helped to avoid further debt by financing government operations. No new project loans have been undertaken since the large reconstruction loan following the 2006 riots.[12]

Culture and society

28. Partly because Tonga was never colonised, many traditional values and social organization, including a feudal system of government by hereditary kings and nobles has been preserved.

29. The basis of Tongan society is land allocation. All land in the Kingdom of Tonga belongs to the Crown and is divided into the King and Royal Family's Hereditary Estates; the Nobles and Chiefs Hereditary Estates; and Government Land. All land is capable of being subdivided into allotments for the people of Tonga.

30. Although Nobles have a relatively greater share of the land than the "commoner" population, all Tongan males over the age of 16 are eligible to apply for a grant of a rural "tax" allotment of 3.3 hectares for farming, and a town allotment of 1,618 square meters for residential purposes.

31. Allotments are inherited by the allottee's eldest son. Data on landlessness is not available but as a matter of food security, there is concern that the "landless and the jobless" are the most vulnerable and will most likely have to rent plots in return for part of the produce.[13]

Perspectives of the Child in the Traditional Tongan Context

32. Traditionally, children are a symbol of continuity and hope for a family. The traditional aspiration is for a child to "earn yourself a living and become useful" (*ma'u ha'o mo'ui, pea ke 'aonga*).

33. The extended family ensures that the child is provided with skills, knowledge and experience that will help him or her make a living, in line with the child's potential and interest.

34. Tongan tradition upholds four moral strands deemed as the pillars of Tongan society: humility and openness to learning; upkeeping and maintaining relationships; showing loyalty, devotion and passion, and acknowledging and returning respect. These ethics are highly valued by Tongan society.

35. From a Christian perspective, children are regarded as "estates" (*tofi'a*) from God. They are considered gifts to be nurtured and raised in line with Christian teachings and values.

[10] Government of Tonga. Tonga Statistics Department. Statistical Abstract (Provisional) (Tonga Statistics Department, Nuku'alofa, 2016).

[11] Government of Tonga. Ministry of Finance and National Planning. Tonga Strategic Development Framework II 2015–2025. (MOFNP, Nuku'alofa, May 2015) 30.

[12] Ibid 36.

[13] Government of Tonga. Ministry of Finance and National Planning. Tonga Millennium Development Goals Final Report. (MOFNP, Nuku'alofa, May 2015) 42.

Environmental issues

36. The environment is of critical importance to the people of Tonga. Natural resources, including the ocean, are the basis for subsistence and economic, social and cultural wellbeing.

37. A number of environmental issues have arisen during the last decade, primarily as a result of Tonga's increasing urbanization, particularly in Nuku'alofa. Growth in the urban population has resulted in the subdivision of agricultural allotments on the outskirts of Nuku'alofa and settlement in swampy areas.

38. A boom in housing construction has seen heavy demands on sand and gravel and the mass removal of mangroves, which increases soil and coastal erosion. Poorly-drained areas often face inundation from the sea and heavy rain, exposing residents to water-borne diseases and other health risks associated with sewage problems.

39. Pollution is a problem arising from improper solid waste disposal, pesticide and fertilizer runoff into the groundwater lens and sea, random waste disposal by seagoing vessels, increased motor vehicle usage and burning off.

40. Since the enactment of the Waste Management Act in 2005, a Waste Management Authority was approved by Cabinet to be responsible for the operation of the Tapuhia landfill on Tongatapu, improving the collection of solid waste on Tongatapu. This has helped curb littering and indiscriminate dumping of solid waste, especially in the urban area.

41. Integrated management of the marine and terrestrial environments is essential to ensure long-term sustainable use of natural resources. Tonga is well placed to protect and rehabilitate its environment and could accrue considerable benefits in terms of sustainability of utilisation and the development of tourism.

I. General measures of implementation

A. Measures taken to Harmonize National Law and Policy with the Provisions of the Convention (art. 4)

42. Harmonization of national law and policy with the provisions of the CRC is a concerted effort of stakeholders, namely Government, NGOs and international donor organisations. Where resources are lacking, Government has sourced international donor funding to assist in the implementation of economic, social and cultural rights for children.

Harmonization with National Laws

43. The Government has not taken specific measures to harmonize national law with the CRC. Drafting of domestic legislation to incorporate the CRC has been held up by lack of coordination and drive within the government.[14] However, with a few exceptions, the laws and policies of Tonga are consistent with the provisions of the CRC. On-going legislative amendments are eventually aligning national law with the CRC, the most recently-passed law being the Family Protection Act 2013.

The Constitution of Tonga

44. Section 1 of the *Constitution of Tonga* is a Declaration of Freedom as follows:

> Since it appears to be the will of God that man should be free as He has made all men of one blood therefore shall the people of Tonga and all who sojourn or may sojourn in this Kingdom be free for ever. And all men may use their lives and persons and time to acquire and possess property and to dispose of their labour and the fruit of their hands and to use their own property as they will.

[14] Government of Tonga. Central Planning Department. The Initial Report of the Kingdom of Tonga. DRAFT. Status of the Rights of the Child in the Kingdom of Tonga (2006).

45. Section 4 further makes prohibition of discrimination by stating the application of the same law for all classes.

> "There shall be but one law in Tonga for chiefs and commoners for non-Tongans and Tongans. No laws shall be enacted for one class and not for another class but the law shall be the same for all the people of this land."

46. The *Constitution of Tonga* makes four Declarations of Rights, namely, the Declaration of Freedom, the Freedom of Worship, the Freedom of the Press and Freedom of Petition.

47. These declarations cover the freedoms expressed in Article 13 Freedom of Expression, Article 14 Freedom of thought, conscience and religion, and Article 15 Freedom of Association and of peaceful assembly.

The Education Act

48. The provisions of the Education Act 2013 to a great extent reflect the provisions stated in the relevant articles of the CRC, in particular articles 28, 29 and 31.

49. Details of the Education Act 2013 are discussed further in Chapter 7. The act makes clear declaration on the right of all children to a quality education and access to education. It sets out provisions for general administration, finance and operations.

50. The unique features of the Education Act 2013 are its ban on corporal punishment, the establishment of early childhood education and a policy on inclusive education.

51. It is designed in such a way to produce a citizen who has had a non-discriminatory childhood education, with fully-developed potential and capable of existing locally or globally.

The Family Protection Act 2013

52. By way of definition, the child is able to take refuge in the provisions of the Family Protection Act 2013 which adhere to the CRC provisions outlined in Articles 16 and 39.

53. A child is defined as a person under the age of 18. "Domestic relationship", amongst other definitions, refers to family members living in the same household including those related by legal or customary adoption. "Domestic violence" is an abusive act, beyond reasonable expectations, committed between members who are in a domestic relationship.

54. Section 28 of the Family Protection Act 2013 declares that a person committing an act of domestic violence commits a domestic violence offence and is liable for punishment. A child who is subjected to arbitrary or unlawful interference within his or her privacy, family, home, correspondence, honour or reputation is protected by this portion of the Act.

55. Part 5 Role of Health Practitioners and Social Service Providers of the Family Protection Act 2013 responds to the provision stated in Article 39 of the CRC relating to the rehabilitation of child victims. It details the measures and procedures to be taken by these two service providers to ensure that the victim is safe and is reintegrated back to society.

Births, Deaths and Marriages Registration Act and the Nationality Act

56. The Civil Freedoms stated in Articles 7 Name and Nationality and 8 Preservation of Identity are contained in the Births, Deaths and Marriages Registration Act and the Nationality Act. Amendments discussed later have been put in place to address the possibility of statelessness. Otherwise, the Acts are able to complement the relevant provisions of the CRC.

57. Other acts enshrining children's rights include:

(a) The *Guardianship Act 2004* — which regulates the guardianship, access, custody and customary adoption of children and ensures the Courts consider the "best interests of the child" in all matters;

(b) The *Criminal Offences (Amendment) Act 2003* — which prohibits activities associated with child pornography;

(c) The *Methylated Spirits Act 2001* — which prohibits the sale of methylated spirit based products to persons under 18 years of age and the purchase of such substances by a person under 18 years of age;

(d) The *Tobacco Control Act 2000* — which prohibits the sale or supply of tobacco products to persons under 18 years of age and impose;

(e) *Employment Relations Bill 2013* — which proposes the protection of children.

58. As with findings in the 1995 study commissioned by UNICEF, the issues below remain to be addressed in Tonga's legal framework:

(a) Raise the minimum age for the penalty of capital punishment from 15 to 18 years of age;

(b) That whipping as a form of judicial punishment be reviewed;

(c) That provision be made for child offenders to be detained separately from adults;

(d) That a juvenile justice system be established.[15]

National Policies and Development Plans

Tonga Strategic Development Framework II 2015–2025; a More Progressive Tonga: Enhancing Our Inheritance (TSDF II)

59. The guiding vision (National Impact) of the TSDF II is "A More Progressive Tonga Supporting Higher Quality of Life for All". It recognises the detrimental impact of inequality on development and growth and draws on, international studies, SDGs and declarations of the "Samoa Pathway" to define National Outcomes (NO) and Organisational Outcomes (OO). Organisational outcomes are propped by five Institutional and Input Pillars spread across Government MDAs as well as NGOs, commercial and social institutions.

60. A review of Tonga's MDG performance highlights outstanding issues, namely, MDG 1 Eradicate Extreme Poverty and Hunger, MDG 3 Promote Gender Equality and Empower Women (MDG 3) and, to a greater extent, MDG 6, Target 6C — the incidence of NCDs.

61. Pillar 2 Social Institutions covers many of the sectors affecting children. There are eight (8) Organisational Outcomes affecting Social Institutions, each of them focusing on improvements and developments in:

(a) Social and civil society organisations;

(b) Enhancing partnerships between government, churches and stake holders;

(c) Social and cultural practices;

(d) Education and training;

(e) Health care systems,

(f) Integrated approaches to addressing communicable and non-communicable diseases;

(g) Collaboration between Tongans in Tonga and abroad.

62. Government realises that in order to "ensure more inclusive and sustainable social engagement, TSDF II Pillar 2 Organisational Outcomes require supporting government

[15] Mere Pulea. The United Nations CRC Compared with the Law of the Kingdom of Tonga: A Review (1995) in Government of Tonga The Initial Report of The Kingdom of Tonga DRAFT. Status of the Rights of the Child in the Kingdom of Tonga (2006).

outputs to place greater focus on ensuring that their services are better delivered to all sectors of society, in particular outer islands and groups with special needs".[16]

Tonga National Youth Strategy 2014–2019

63. The official youth age for Tonga is 14–35. The strategy aims to improve the quality of life of young people by fostering an empowering environment that promotes employment creation, skills development, healthy living, community service and mainstreaming youth participation in development.

Tonga Education Lakalaka Policy Framework (TELPF) 2012–2017

64. The Education sector has been strengthened along the principals of the CRC through the "Education Policy Framework 2004–2019", approved by Cabinet in May 2004. This policy is a conscious effort on behalf of the government to improve equity of access (including extending universal basic education from Class 6 to Form 2), and quality of education being provided to children in Tonga. It supports Inclusive Education by planning for the development of ECE centres, training for teachers and education for children with disabilities.

Revised National Policy on Gender and Development (RNPGAD) 2014–2018

65. The vision of the RNPGAD is to achieve gender equity by 2025, specifically "that all men, women, children and the family as a whole achieve equal access to economic, social, political and religious opportunities and benefits".[17] Children's rights are promoted under the outputs of the policy. Issues such as protection of children against violence, understanding of children's rights, support services for children, healthcare services, vulnerable women with families including children and research on children's rights are advocated by the RNPGAD.

Tonga National Policy on Disability Inclusive Development 2014–2018 (TNPDID)

66. This is being drafted by the newly established Social Protection and Disability Division of the MIA to set up coordination and align legislation with provisions of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). It deals with the following themes:

- Understanding the Disability Paradigm;
- CRPD in practice;
- Situational Analysis on Disability Development;
- Non-Discrimination and Equality;
- Gender, Disability and Human Rights.

67. In line with the Principles of the CRPD, the national policy recognizes respect for the right children with disabilities.

National Plan of Action

68. The Government has not adopted a National Plan of Action or National Strategy for Children. However, line-ministries have their own plans which support children's programmes as shown above.

69. There are no firm plans yet to have a national plan or strategy for children although there is general agreement for the need for national coordination.

[16] Government of Tonga. Ministry of Finance and National Planning. Tonga Strategic Development Framework II 2015–2025. (MOFNP, Nuku'alofa, May 2015) 66.

[17] Government of Tonga. Women's Affairs Department, MIA. Revised National Policy on Gender and Development (RNPGAD) (2014) 10.

Resources for Children

70. There is currently no specific budgetary allocation from the national budget for the implementation of the CRC. However, line-departments are implementing through their individual budgetary allocations.

71. Total recurrent budget for 2017–18 was T$344.6 million. Budget allocations for the Ministry of Health (MOH) and Ministry of Education and Training (MET) have over the past 3 years risen steadily. The highest share of the recurrent budget for 2017–18 is the MET which is allocated T$52.6 million, an increase of 14.5% from 2016–17 and 27.3% higher than the provisional budget for 2015–16. The MOH receives T$38.9 million, a 19.3% rise from its 2016–17 allocation.[18]

72. Just over 60% of the expenditures of the MET and MOH will be spent on staff remuneration.[19]

73. Priority expenditure areas affecting children for the 2017–18 and 2018–19 period include:

(a) An increase in spending on the subsidies for non-government schools by T$2.0 million to cover for the portion funded by New Zealand and Australia. Contributions from New Zealand and Australia are to be terminated in 2017–18;

(b) Expenditure of T$3.0 million in 2017–18 to clear out Primary and Secondary building maintenance work sustained from previous financial years.[20]

74. International development assistance continues to provide a significant contribution to complement domestic resources to ensure that the government's vision is achieved. The estimated development budget for 2017–18 amounts to T$251.3 million, a reduction of 3.3% over the 2016–17 original estimates due to underspending of 2016–17 allocations.[21]

75. Of the T$39.7 million (15.8% of total aid-funded budget) allocated to Social Institutions for 2017–18, T$18.9 million is to be spent on OO.2.4 Improved Education and Training Providing Lifetime Learning and T411.2 million on OO.2.5 Improved Health Care and Delivery Systems.[22]

76. Major international aid donors include the ADB, World Bank, Government of Japan, Government of Australia and the Government of New Zealand.[23]

International Assistance Relating to Children

UNICEF

77. UNICEF promotes the rights and wellbeing of every child.

78. Through its Pacific Office, recent projects involving UNICEF include:

(a) Participation in Pacific Humanitarian Team meeting to work alongside Tonga's National Emergency Management Office (NEMO) in recovery from Tropical Cyclone Gian in 2014;

(b) Promotion of cyber safety by working together with the Government of Samoa and Tonga to launch the Cyber Security Strategy plan 2016–2021 to keep children in Pacific countries safe from cyber-related harassment;

(c) Partnership with the MET to finalise Tonga's Initial Report to the CRC;

[18] Government of Tonga. Ministry of Finance and National Planning. Government of Tonga Budget Statement for the Year ending 2018. (MOFNP, Nuku'alofa, June 2017) 33.
[19] Ibid 43.
[20] Ibid 45.
[21] Ibid 53.
[22] Ibid viii.
[23] Ibid 53.

(d) Partnership with the National Statistics Office and the MIA on National Disability Survey which will commence in 2018;

(e) Provision of technical assistance for the revision of Tonga's Adoption laws;

(f) UNICEF also supported Tongan senior officials who participated in a south-south collaboration on social protection with the Cook Islands Ministry of Internal Affairs;

(g) Support was provided to the National Statistics Office for the 2016 census;

(h) Advocacy forum for social impacts of Global Economic Crisis (GEC) and implications on child rights.

UNDP

79. UNDP strives to support the Pacific by coordinating United Nations activities at country level and through direct policy advice in the following areas: SDGs, acceleration, resilience and sustainable development, inclusive growth and poverty reduction; effective governance; gender equality; and environmental management, climate change and disaster risk management.[24]

80. Tonga benefits from the Umbrella Pacific Regional Project which aims at achieving simultaneous eradication of poverty and reduction of inequalities and exclusion in the Pacific.

81. Specifically, UNDP's aid to Tonga in 2013 totalled US$289,332.38. Recent projects have included South-South Learning to Boost Secretariat functions of Tonga and Fiji Parliaments, Tonga Governance Strengthening Programme in 2013, Ridge to Reef Project: Integrated environmental management of the Fanga'uta Lagoon catchment and the Tsunami Drill evacuation route in partnership with NEMO, MET and Tonga Police in 2017.

UN Women

82. UN Women administers the Pacific Regional Ending Violence against Women Facility with funds received from the Australian Government. Over the period 2013–2017, US$500,000 has been distributed to various NGO's to conduct activities promoting the end of violence against women. These activities include raising awareness, training, providing information on services, advocacy and lobbying for legislation.

83. Grantees include organisations such as Ma'a Fafine mo e Famili (MFF), TNCWC, WCCC, Talitha Project and the MIA WAD.

ADB

84. ADB supports Tonga in strengthening macro fiscal management and improving long-term growth prospects through structural reforms and infrastructure projects.

85. The ADB programming strategy for 2017–2019 is based on strengthening Tonga's capacity for macro fiscal management, and improving the economy's long-term growth prospects through structural reforms and major transformative infrastructure projects.

86. ADB has been working with the Government of Tonga since 1972. It has approved 17 loans and 17 grants totalling $157.3 million from the Asian Development Fund, and 66 technical assistance projects worth $22.42 million.

World Bank

87. As of October 2017, the World Bank is engaged in six projects in Tonga worth a total of USD93 million. These projects are the following.

88. Climate Resilience, Kingdom of Tonga — Pacific Resilience Program aimed at strengthening early warning, resilient investments and financial protection of Tonga.

[24] UNDP Pacific Office in Fiji. Site accessed October 2017. <http://www.pacific.undp.org/content/pacific/en/home/operations/about_undp.html>.

89. Aviation. Tonga Aviation Investment Project. Improvement of operational safety and oversight of international air transport infrastructure.

90. Telecommunications. The Pacific Regional Connectivity Project is being funded through grants of US $34 million, including $17.2 million from the World Bank, $9.7 million from ADB and a $6.6 million investment from Tonga Communications Corporation.

91. Budget Support. An on-going policy partnership, the First Inclusive Growth Development Policy Operation aims at assisting the Government of Tonga in delivering reform to support fiscal resilience.

92. Renewable Energy. US$2.9 million grant to implement the Tonga Energy Road map to improve the access, efficiency and cost of energy for Tonga's 104,000 people.

93. Roads. Assisting the Government in establishing and consolidating the operations of the newly-created Ministry of Transport (now Ministry of Infrastructure) as a unified ministry, and improvement of compliance of the civil aviation and maritime entities with international safety and security standards.

94. Provision of technical assistance in partnership with Australian aid program and Global Partnership for Education to conduct the Pacific Early Age Readiness and Learning (PEARL) Program in the Pacific, including Tonga.

USAID

95. United States Agency for International Development (USAID) and the Office of U.S. Foreign Disaster Assistance (OFDA) collaborated with the Tonga National Council of Churches (TNCC) in 2014 to support Disaster Risk Reduction awareness and response training in Ha'apai, Tongatapu and Vava'u. The project was worth US$500,000 of funding.

DFAT

96. Australia's aid to Tonga is channelled via the Department of Foreign Affairs and Trade (DFAT). Australia's longstanding, cooperative relationship with Tonga has committed Australia, under the Australia-Tonga Aid Partnership (2016–19), to provide an estimated $30.4 million in total Official Development (ODA) to Tonga in 2017–18. This will include $17.6 million in bilateral funding to Tonga managed by the DFAT. The continued focus will be on economic reform, private sector development, and health and skills development.

97. Australia's aid program has contributed to the following results in the past:

(a) Budget support, reduced debt and increased revenue performance;

(b) Implementation of the Tonga Procurement Reform Strategy;

(c) Implementation of an integrated program to reduce all key risk factors of NCDs;

(d) Launch of National Non-Communicable Diseases Strategy in February 2016;

(e) Introduction of higher excise duty on tobacco and unhealthy food;

(f) Legislation for "smoke free" areas;

(g) Screening for rheumatic disease throughout Tonga for approximately 6,351 children;

(h) Skills and training exchange for Tonga's Vaiola Hospital and St John of God Hospital in Ballarat;

(i) Fellowships, scholarships and training;

(j) Seasonal Worker Programme benefitting more than 10,189 Tongans.

MFAT

98. New Zealand supports Tonga to improve its energy infrastructure, grow tourism and strengthen the quality of its education and law and justice systems through its Ministry of

Foreign Affairs and Trade (MFAT). New Zealand's total aid to Tonga in 2015–16 equalled $22.1 million made up of programme funding for activities specific to Tonga, as well as other funding which can include scholarships, regional initiatives, activities supported through the Partnerships Fund, and humanitarian response.

99. New Zealand and Tonga have signed a Joint Commitment for Development which sets out the shared vision of the two governments. The priority areas include:

- Energy: Expand access to affordable, reliable and clean energy;
- Law and justice: Strengthen law and justice systems;
- Education: Improve knowledge, skills and basic education.

100. Recent achievements of New Zealand's aid to Tonga include:

- Funding the Maama Mai solar farm in 2012;
- Restoration of electricity infrastructure damaged by Cyclone Evan;
- Village Network Upgrade Project;
- Tonga Police Development Programme Phase II;
- Tonga Education Sector Project (TESP).

Cooperation with Civil Society

101. There are indications that government and civil society are becoming more and more engaged. Government is increasingly consulting civil society for input into national planning and monitoring.[25] Recent collaborations were on the historic *Family Protection Bill* passed into law in September 2013.

Women and Children's Crisis Centre (WCCC)

102. The WCCC founded in 2009 provides counselling, refuge and advocacy for survivors of domestic violence, sexual abuse and child abuse.

103. WCCC services include 24-hour counselling, temporary shelter, support, male advocacy, community outreach and awareness, women and young girls' empowerment and research and information communication. Its Young Emerging Leaders Program is directed at ages 12 to 25.[26]

104. The WCCC partners with the Police Domestic Violence Unit (DVU) on a daily basis with regards to inter-agency referrals between the police stations, the counsellors and particularly the Safe House. The MOH also makes referrals to the Centre for counselling or Safe House support.

Tonga Health Promotion Foundation (THPF)

105. The THPF was established by the *Health Promotion Foundation Act 2007* as an independent body to act as a link between the community, NGOs, and the Government to promote health by fighting Non-Communicable Diseases (NCDs). This is the government's initiative to address the NCDs crisis in Tonga.

106. THPF initiatives directly affecting children include anti-tobacco campaign to reduce smoking around children, the "Maie5" campaign aimed at encouraging primary schools to grow vegetable gardens and learning methods of healthy cooking, the "First 1000 Days" SMS campaign targeting healthy pregnancy, nutrition management and breastfeeding, and partnership with Tonga Police and Salvation Army in training to reduce alcohol-related harm amongst youth.

[25] Civil Society Briefs: Tonga. ADB's work in Tonga. Site accessed October 2017. <www.adb.org/tonga>.

[26] Tonga WCCC Facebook Page. Site accessed October 2017. <https://www.facebook.com/pg/tongawccc/about/?ref=page_internal>.

107. The Government has allocated THPF T$600,000 of the recurrent budget for the year 2017–18 plus a further T$3.2 from DFAT to fund its activities.

Tonga Family Health Association (TFHA)

108. The TFHA is a donor-funded NGO working in collaboration with UNFPA and the Secretariat of the Pacific Community's Adolescent Reproductive Health Program. The Government contributes $1000 per year towards operation of the Association.

109. The TFHA provides knowledge, information and education on family planning and sexual health at the community level, targeting our vulnerable population especially the poor, marginalized and at risk. The TFHA clinic provides services on general and specialised counselling, management of sexually transmitted infections (STIs), antenatal care, family planning, maternal and gender health, child health and general health.[27]

Ma'a Fafine mo e Famili (MFF)

110. Established in 2008, the MFF aims at fostering and promoting a just and peaceful society through the empowerment of women's knowledge of their Human Rights thus improving their economic, social and political knowledge, skills and status in the society.

111. The MFF focuses its work on the Universal Declaration of Human Rights, the CRC and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

112. MFF delivers a range of services including workshops; community research and human rights monitoring; forging stakeholder links and building partnerships; the provision of counselling and victim support and in general terms, human development.

National Centre for Women and Children (TNCWC)

113. An NGO funded by NZAID with support from the Government through the provision of office space. Based on the principles of the Universal Declaration of Human Rights, The CRC and the CEDAW, the TNCWC is a crisis centre whose mission is to work towards the elimination of violence against women and children. The centre provides counselling and support services for women and children, as well as a safe house.

Tonga Lifeline

114. Tonga Lifeline's services have declined over the past 10 years due to lack of commitment, funding and resourcing. It begun as primarily a telephone counselling service operated by the Free Wesleyan Church. It focused on children and youth and also offered counselling services and a Safe House mainly for street children and girls in the sex exploitation industry.

115. Now, Tonga Lifeline has been reduced to handling deportees, rehabilitation, counselling and follow up as well as occasional referrals from Police in the case of young male offenders whom Police cannot retain.

Tonga National Youth Congress (TNYC)

116. The TNYC an umbrella NGO established in 1991 with the mission to better the youth of the Kingdom of Tonga through programs that foster responsibility, citizenship, community service and leadership. It focuses on activities in the areas of sports, environmental awareness, education, health and mental well-being, enterprising vocations.

117. The TNYC definition of "youth" is persons between the ages of 14 and 35 years, however people outside this age group are not barred from participating in youth activities. Funding for the TNYC is provided via the MIA as well as financial support from local and international donors. The TNYC serves as the key partner for the MIA, Youth Division, in

[27] TFHA Facebook Page. Site accessed October 2017. <https://www.facebook.com/pg/TongaFamilyHealthAssociation/about/?ref=page_internal>.

identifying emerging trends affecting young people in Tonga and developing innovative responses to these trends.

118. The TNYC focuses on four main areas namely, media, business, health and education and data collection and research. Challenges include: negative images of youth in Tonga, lack of employment opportunities, financial constraint, low self-esteem/motivation and scarcity of resource.

Salvation Army

119. The Salvation Army Tonga Office is based in Tongatapu and provides a number of important services including the Alcohol and Drug Awareness Centre which provides, inter alia, education and awareness programs for primary and secondary school children about the dangers of substance abuse, counselling and support programs for children at risk in schools and a rehabilitation program for child offenders referred by the courts.

Catholic Women's League (CWL)

120. Established in 1992, the CWL has been at the forefront of women's and children's rights awareness and education in Tonga for almost a decade. Through the successful Legal Literacy Program, the CWL has provided a number of training courses and workshops on the CRC, some of which were conducted under the "Assisting Communities Together" (ACT) Project of the OHCHR and UNDP.

121. In the year 2000, the Government established the TNCWC, through bilateral aid with the New Zealand Government, and led the support services for Women and Children that was initially provided by the CWL.

Civil Society Forum of Tonga (CSFT)

122. The CSFT was established in 2001 to address and coordinate the needs and collective roles of Civil Society Organisations (CSO's), and to better serve their communities. The CSFT is recognised as the umbrella organisation for NGO's.

123. The Government of Tonga has recognized the potential of CSFT in taking the lead role for involvement of Non-Government Organisations on Political, Social and Economic activities that lead to sustainable development economic growth and income generation.

124. CSFT is equipped with the necessary professional and expertise to guarantee success and prosperity, and to ensure achievement of objectives.

Disability Service Providers

125. Government continues to collaborate with NGOs in the areas of disadvantaged and vulnerable groups such as persons with special needs (disabilities) with the view towards addressing their access to social protection and support. The Department for Social Protection and Disability (DSPD) positioned within the MIA partners with service providers such as the Alonga centre, MFF, OTA and NATA.

Mango Tree Respite Centre Tonga

126. A ministry of the Church of Nazarene acting as a respite centre for children with disabilities and their families. Clients and their families receive comfortable and hygienic respite care, vocational and educational service, rehabilitative home visits and wheelchairs or home modifications. They are also offered computer class and braille courses.

'Ofa, Tui, 'Amanaki Centre (OTA Centre)

127. Established as a national centre for young children with disabilities, the OTA Centre registered an enrolment of 17 students in their ECE program in 2013. The OTA is managed by the TRCS.

Naunau 'o e 'Alamaite Tonga Association Inc. (NATA)

128. NATA is a not for profit organisation formed by a group of people with disabilities who have come together to speak out for themselves and help empower people of differing abilities in the Kingdom of Tonga. NATA believes that people with disabilities are the best people to make decisions about disability issues.

129. NATA plays a key role as an implementing agency of the DSPD's Tonga National Policy on Disability and Inclusive Development 2014–2018.

Alonga Centre

130. The Alonga Centre is a residential centre for adults and children with disabilities. The centre has facilities that can accommodate twenty-five residents.

Tonga National Disability Congress

131. A NGO offering tertiary education for around 30 students with disabilities.

Other Community Youth and Faith-based Organisations

132. There are numerous other non-government and faith based organisations currently contributing in various ways to the development of youth. These organizations help in the development of skills necessary for effective participation in society, promotion of tolerance and increased cooperation and exchanges between youth organizations and young people, spiritual development, community project initiatives and sports and establishment of income-support for themselves and their families.

Strengthening mechanisms for coordinating polices relating to children and for monitoring the implementation of the Convention

133. The National Coordinating Committee for Children (NCCC) Established by Cabinet in 1997 as a response to Tonga's accession to the CRC, the Members are: (Government and NGO):

- Chair Deputy Director of Education (Primary);
- Members Representative from the Ministry of Health;
- Representative from the Ministry of Foreign Affairs;
- Representative from the Central Planning Department;
- Representative from the Tonga National Youth Congress;
- Representative from the Tonga National Council of Churches;
- Representative from the Justice Department;
- Representative from the Ministry of Police;
- President, Tonga Pre School Association;
- Secretary Ministry of Education, Women's Affairs and Culture (now Ministry of Education and Training).[28]

134. The broad objective of the NCCC has been to provide a focal point to coordinate policies, programs and activities for children and the family, with the ultimate goal of improving the welfare of all children in the Kingdom of Tonga.

135. The NCCC was not established with any authority to intervene with respect to the violation of the rights of an individual child in Tonga, but rather to provide broader policy and planning responsibilities.

[28] The NCCC Membership needs to be updated as there have been recent portfolio changes.

136. The broad Terms of Reference for the NCCC as established by the Government include examination of child-related problems, defining child abuse, reviewing programs and legislation relating to children, advising on measures taken to improve the general conditions for children, formulation, implementation and update of a national children's policy, undertaking activities beneficial to children and following up the mandate of the CRC.

137. The NCCC is under the auspices of the MET.

138. The NCCC has been unable to adequately fulfil its Terms of Reference due to challenges to its work program. These include budgetary constraints (The NCCC operates without a designated budget), the preoccupation of members with their core responsibilities (the NCCC does not have any fulltime staff) and a lack of commitment from Government departments tasked with the ongoing management and development of the NCCC.

139. The NCCC is yet to advise the government or provide recommendations on any matters concerning the rights, interests and development of children. It is hoped, however, with the completion of this Report and the recent priority given by the Government to social development issues that the NCCC will be re-established to lead and promote the recognition and mainstreaming of children's rights and interests in Tonga.

Independent Monitoring Mechanisms

140. Tonga does not have a national human rights institution. Tonga's response to the UPR recommendations in 2013 reiterated that "The establishment of a national human rights institution continues to be a difficult proposition for Tonga, given its very limited financial and human resources. The compromise is that Tonga intends to establish a Human Rights desk at either the Attorney General's Office or the MIA."

141. The present Ombudsman's Office receives complaints made against any department or organisation of the Government. It can receive complaints relating to decisions made against a public servant by Ministers or Governors, complaints referred to them by the Prime Minister or any issue which is in the public interest.

142. The Ombudsman's office deals directly only with rights relating to persons in custody or in prison but it is not set up to deal solely with human rights issues. On the other hand, however, it may enforce a human rights in situations where departments neglect to action human rights related complaints.

Data Collection

143. Data on children is collected individually by line-ministries or on request by the Statistics Department. At present, there are no comprehensive surveys on the status of the child.

144. Latest national surveys relating to children include the National Demographic and Health Survey (2012), Household and Income Expenditure Survey (HIES) 2016 and the National Census 2016.

B. Measures taken to make the Principles and the Provisions of the Convention Widely Known (art. 42)

145. In 2001 the NCCC commenced a process of public information and consultations regarding the CRC. Government agencies and NGO's such as the CWL Legal Literacy Project, Tonga Lifeline and TFHA worked collaboratively in this process.

146. In 2002 and 2003, the Council of Churches in conjunction with NCCC conducted an extensive public awareness campaign, including the provision of information about the compilation of this Report, the importance of CRC and its impact on development. NCCC representatives from the MOH and MET conducted approximately 10 radio and television awareness programs about the right of children to health and education respectively.

147. As part of the collection of data from government agencies for the preparation of this report in 2002, the NCCC undertook an awareness session with the Heads of Department through the monthly Heads of Department meeting directed by the Prime Minister's Office.

148. In 2004 the Government's Planning Department was responsible for the generation of a week-long MDG's television awareness program which included the provision of information about Tonga's commitment to international conventions such as the CRC.

149. In 2005 at the national CRC workshop, the officially launched translation of the CRC was distributed to a wide representation of the public by a number of NGO's after intensive discussions and workshops. Funding for the project was provided by UNICEF and NZAID in 2002. Over 100 printed copies and 200 electronic copies of the translated CRC were distributed during this period. Copies of the translation remain elusive.

150. A large number of public awareness programs were implemented at this time, including televised panel discussions and interest from local media provided almost two weeks of exposure for the translated CRC. Better coordinated awareness activities are required.

151. In 2016, UNICEF in conjunction with the MIA conducted training at national and sub-national levels on child protection in emergencies. Participants included town and district officers, representatives from NEMO, MOP, MOH and MET. Child protection issues relating to abuse, exploitation and gender-based violence were discussed.

152. In 2016, the MIA and UNICEF hosted a National Cyber Safety Week to encourage safe online habits and educate people on risks related to using the internet.

153. Information regarding the CRC is yet to be incorporated directly into school circular. This is a critical area that must be addressed as anecdotal evidence and observations from public consultations in 2017 suggest that there is still significant lack of awareness of the CRC. On the other hand, children and the public are increasingly aware of rights to health care and education through various promotions, events and developments.

154. The CWL Legal Literacy Project with the financial support of NZAID has conducted over 20 CRC awareness programs across all main island groups of Tonga specifically targeting professionals in the education system.

155. There is still work required in the education of public officials and professionals involved with children, particularly those officials involved in the juvenile justice system such as Magistrates, Police Officers and Prison Officers.

C. Measures taken to make the Reports of the Convention Widely Known (art. 44)

156. The initial draft produced in 2006 was available as a copy for public consultation. The NCCC intends to make the Tonga's initial report available electronically and in print.

II. Definition of the child

157. Under Tongan law there are varying definitions of childhood and variations on the age of legal responsibility.

When a Child is a Person in Being

158. For the offence of murder or manslaughter, the *Criminal Offences* Act provides that a child becomes a human being when it has been completely brought forth alive from the body of its mother and have an independent circulation but not that it should have been detached from the mother by severance of the umbilical cord.[29]

[29] Criminal Offences Act Cap. 18 s 98.

The Age of Majority

159. The CRC defines a child as aged up to 18. All articles of the CRC relate to this age range. Tongan law does not specify an age that separates childhood from youth but tends to determine the age of majority according to a person's activity.[30]

Eligibility to Vote

160. The *Constitution of Tonga* grants the right to vote to every Tongan subject of twenty-one years of age or more.

Nationality

161. Under the *Nationality Act*, Tongan nationality is granted to persons born to parents who are Tongan nationals. Children under the age of 16 no longer become Tongan subjects if their father, being a Tongan subject, gives up his Tongan nationality. After attaining the age of 16, the child may apply for resumption of their Tongan nationality.[31]

Compulsory Education

162. For the purposes of compulsory education, The *Education Act 2013* states that a child is any person who has reached compulsory school age. A child is deemed to be of compulsory school age if he or she is between 4 years and 18 years[32].

Criminal Liability

163. The *Criminal Offences* Act prescribes that a child under the age of 7 years is exempt from criminal liability. A child between the age of 7 and 12 years will not be criminally responsible unless the Court or jury consider the person to have attained sufficient maturity of understanding to be aware that he or she was committing an offence[33].

Victims of Cruelty

164. For the offence of cruelty to children and young persons, the *Criminal Offences Act* defines a "child" to mean a person under the age of 14 years, and a "young person" to mean a person who is above the age of 14 and under the age of 16 i.e. 15 years old.[34]

Marriage

165. Under the *Births, Deaths and Marriages Registration Act*, the minimum age of marriage is 15 years for either male or female. The marriage of a person under 18 requires the written consent of the person's guardian. No person who is insane can be granted a marriage license.[35]

Adoption

166. Tongan legislation provides only for the adoption of illegitimate children. The Maintenance of *Illegitimate Children Act* provides for the adoption of an illegitimate child under the age of 21 years with the consent of the mother. The Supreme Court, in the interest of the child, holds discretion over the consent of the mother and granting of Letters of Adoption. Persons granted Letters of Adoption are responsible for the maintenance and education of the illegitimate person. The adopted person has rights to bear the name and nationality of the person to whom Letters of Adoption have been granted.[36]

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[30] Government of Tonga. Central Planning Department. The Initial Report of the Kingdom of Tonga. DRAFT. Status of the Rights of the Child in the Kingdom of Tonga (2006).

[31] Nationality Act, Cap. 59 s 3.

[32] Education Act 2013 s 2.

[33] Criminal Offences Act Cap. 18 s 16.

[34] Criminal Offences Act Cap. 18 s 116.

[35] Births, Deaths and Marriages Registration Act Cap. 42 s 6.

[36] Maintenance of Illegitimate Children Act Cap. 30, s 15, 16, 17, 18.

167. At the age of 21, adopted persons of other nationalities may apply to the Supreme Court for Letters of Admission to become Tongan subjects.

Guardianship

168. The Guardianship Act 2004 defines a child as a person under the age of 18 years and includes an unborn child. Guardianship of a child is terminated when the child attains the age of 18 years or marries under that age according to law.[37]

Family Protection

169. A child under the definition of the Family Protection Act 2013 is a person under the age of 18.[38]

Right to Town and Tax Allotments

170. Tongan male subjects can be granted town and tax allotments by the age of 16. These allotments are hereditary and of a size and annual rent determined by law.[39]

Entitlement to Estates or Titles

171. Under the provisions of the Constitution of Tonga, a person may succeed to an estate or title when that person has attained the age of twenty-one years. Members of the Royal Family have rights of succession by the age of eighteen years.[40]

Children in Armed Forces

172. No person under the age of 16 years may enlist into the armed forces. A person between the ages of 16 years and under 18 years may only enlist into the armed forces with the written consent of a parent or guardian.[41]

Child Labour

173. There is no specific national law in Tonga on child labour. A draft legislation — *Employment Relations Bill 2013* — is in process for approval and enactment. The ERB provides for protection of children in employment.

174. Tonga joined the International Labour Organisation in February 2016.[42] Although Tonga has yet to ratify any of the ILO's Conventions, it has a constitutional obligation to respect, to promote, and to realize in good faith the principles concerning the fundamental rights at work — one of which is the effective abolition of child labour.

Sexual Consent

175. The age of sexual consent is 16 years. Under the *Criminal Offences (Amendment) Act 2012*, an act which constitutes an indecent assault committed against a young person under the age of 15 cannot take up the defence of consent, and is therefore punishable by court.[43]

Juvenile Offences

176. There is no provision in the current criminal legislation for juvenile offences.

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[37] Guardianship Act 2004 s 2.
[38] Family Protection Act 2013 s 2.
[39] Act of Constitution of Tonga (Amendment) Act 1997, s 3.
[40] Constitution, Clause 27.
[41] His Majesty's Armed Forces Act 1992 s 25.
[42] ILO. 2016 Findings on the Worst Forms of Child Labour, ILO.
[43] Criminal Offences (Amendment) Act 2012, s 14.

177. Further relevant age-based rights are set out below:

Category	*Age*
Employment[44]	Aged 14 and over
Light work employment[45]	12–13 years
Employment in hazardous work[46]	18 years and over
Qualification to serve on juries[47]	21 years and over
Can give unsworn evidence[48]	Any child of "tender years"
Can receive penalty for false unsworn evidence[49]	Any child of "tender years"
Voluntary admission to mental health facility[50]	Between 14–18 years
Cannot be admitted to a mental hospital unless under request[51]	Under 14 years
Cannot be admitted to a mental hospital for adults unless separate care is provided[52]	Under 14 years
Cannot consent to medical surgery without parent or guardian approval, except in emergencies.	Under 18
Exclusion from death penalty[53]	Under age 15 years
Can be penalised for cruelty to children and young persons.[54]	Aged 16 and over
Can be imprisoned	Over the age of 7 years
Consumption of alcohol[55]	18 years of age or over
Eligible to purchase tobacco[56]	18 years of age or over
Eligible to register as owner of motor vehicle[57]	18 years of age or over
Eligible for driver's license[58]	Over the age of 18
Legal counselling and advice	The right exists for everyone, "right to legal representation"
Tonga Police Act definition of a "Child"	Less than 18 years of age

[44] Ibid s 85.
[45] Ibid s 86.
[46] Ibid s 87.
[47] Act of Constitution of Tonga (Amendment) Act 1990, s 5.
[48] Evidence Act, Cap. 15 s 116.
[49] Ibid.
[50] Mental Health Act 2001, s 10.
[51] Ibid, s 11.
[52] Mental Health Act 2001, s 11.
[53] Criminal Offences Act, Cap. 18 s 91.
[54] Ibid s 115.
[55] Intoxicating Liquor Act, Cap. 84 s 65.
[56] Tobacco Control Act 2000, s 9.
[57] Traffic Act, Cap. 156 s 6.
[58] Ibid s 15.

III. General principles

A. Non-discrimination (art. 2)

178. Clause 4 of the Constitution embodies the principle of non-discrimination as follows:

> "There shall be but one law in Tonga for chiefs and commoners for non-Tongans and Tongans. No laws shall be enacted for one class and not for another class but the law shall be the same for all the people of this land (Emphasis added)".

179. The Constitution and most current domestic legislation do not include the principle of non-discrimination specifically for children or cover all the possible grounds for discrimination stipulated in article 2 of the CRC, however the Tongan Court of Appeal has interpreted clause 4 to "reflect the equality implicit in clause 1 (we are all "of one blood") by requiring that the general law of Tonga apply equally to all."[59]

180. Section 78 of the *Employment Relations Bill 2013* prohibits discrimination in areas including: ethnic origin, colour, gender, religion, political opinion, national extraction, sexual orientation, social origin, marital status, pregnancy, family status, state of health including HIV/AIDS, disability and trade union membership or activity.[60]

181. While the Constitution implies that children have the same rights and protections as all citizens, it does also provide limited rights to certain classes of persons. These include:

Women and girls

182. Tonga's land laws are based on primogeniture inheritance, with land and titles being inherited through the paternal line of descent. Woman and girls cannot own land[61], although they may lease land.

183. While women hold substantial social status, they currently hold very minimal political power. This is despite women and girls surpassing men in educational attainment and joining the formal employment sector where economic disparities on the basis of gender are disappearing.

184. In 2001 the Government established the National Policy on Gender and Development with the vision, "Gender Equity by 2025: That all men, women, children and the family as a whole achieve equal access to economic, social political and religious opportunities and benefits." The policy was revised in 2014 with the emphasis on family and social issues, unequal access to employment, unequal access to political representation, vulnerability, roles and capacity in disaster response, environmental and climate change and the enabling environment for gender mainstreaming.

185. The national agency responsible for implementation of this policy is the Government's WAD which is presently under the auspices of the MIA. Its mandate includes the coordination of women's activities and the management of Government's commitments to the National Policy as well as regional and international agreements and plans, such as the Pacific Platform for Action, for Women, the Commonwealth Plans on Gender and Equality, the Beijing Platform for Action for Women and the SDG.

186. A review of Tonga's MDG performance revealed that gender equality, in particular women's representation in parliament, was an outstanding issue for that period. The TSDF II follows on from that concern in National Outcome C which aims at Human Development and Gender equality.

187. Tonga's ratification of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) has met with criticism from church and women's groups who claim that ratification will force same sex marriage and abortion on

[59] Touliki Trading Enterprises Ltd v Fakafanua (1996) TOCA 1

[60] Employment Relations Bill 2013 s 78.

[61] Under clause 113 of the Constitution," A widow shall have the right to succeed to her deceased husband's tax and town allotment".

the country. NGO's and CSO's continue to lobby for its ratification through workshops and awareness initiatives. As committed by a former Minister, the WAD is developing strategies including media campaigns for national consultation, awareness raising and consultation on the CEDAW.

Disability

188. Tonga signed the Convention on the Rights of Persons with a Disability (CRPD) in November 2007. Disability-specific rights are preserved in various legislation such as the *Education Act 2013 and the Family Protection Act 2013*.

189. Tonga's draft National Policy on Disability Inclusive Development is a response to align national policy with the CRPD. One of the overarching principles is the "respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities".[62] It outlines a multi-stakeholder approach to the implementation of the proposed policy under the coordination of the DSPD of the MIA.

190. The *Education Act 2013* makes clear provision for non-discrimination in its Principle of Inclusiveness, section 111 which states that:

> "Every child under the age of 19 years has a right to access quality education in Tonga, irrespective of the child's gender, religion, socio-economic status, physical condition and location."

191. Inclusive Education, which is still at its infancy stage, provides access for children who suffer some kind of disability with the aim of having it mainstreamed. IE was piloted in 2013 with 24 students at just one school in Tongatapu.

192. Services available for children with a disability are discussed further in Chapter 6 Disability, Basic Health and Welfare and Chapter 7 Education, leisure and cultural activities.

Children born out of Wedlock

193. Children born out of wedlock comprise 17% (332 in total) of births in 2016.[63] Children born out of wedlock often suffer discrimination due to laws and religious stigmas that view these children as inferior to children born in wedlock. For example, under the Constitution only children born in wedlock may inherit hereditary estates and titles.[64] A child born out of wedlock is referred to in legislation as an "illegitimate child".

194. Section 3 of the *Births, Deaths and Marriages Registration Act* requires parents of children born in or out of wedlock are required to register the child within three weeks of birth. A child's birth status must be recorded in the Birth Registration.[65]

195. On 23 June 2006 the Privy Council approved a submission from Cabinet to make dual citizenship for Tongan citizens lawful and to correct anomalies within the *Nationality Act Cap. 59*, such as the issue of stateless children born out of wedlock to a Tongan mother and non-Tongan father. The Privy Council has directed the Crown Law Office to draft the necessary amendments to the *Nationality Act Cap. 59* and to other relevant legislation, and submit these to Cabinet and the Privy Council for detailed consideration and approval, "with the express aim of enacting them during the current session of Parliament." This has been amended so that now nationality can be accorded to any person born in Tonga, or abroad, to a Tongan mother or father.

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[62] Government of Tonga. Social Protection and Disability, MIA. Tonga National Policy on Disability Inclusive Development DRAFT POLICY. (2014).

[63] Government of Tonga. MOJ. Tonga MOJ Annual Report 2016. (MOJ, Nuku'alofa, 2016).

[64] Constitution of Tonga. S 111.

[65] Births, Deaths and Marriages Registration Act. Schedule 5

Ethnic minorities

196. There are no ethnic minorities in Tonga. According to the National Census 2016, non-Tongan children under the age of 18 comprised 1.9% (350) of the total under 18 population. Of those, the majority 23% (80) of children were of Chinese ethnicity.

197. There are no ethnic-based limitations for non-Tongan children attending school, receiving medical care or attending any other functions or events. Non-Tongans are free to choose which school they prefer to attend or which religions they belong to. Most of them choose to attend schools where speaking English is compulsory for students and teachers.

198. Tonga acceded to the Convention on the Elimination of All Forms of Racial Discrimination (CERD) on 17 March 1972. This has generated initiatives to create awareness and tolerance of minority communities.

199. Between 2001 and 2003, as part of the OHCHR/UNDP "Assisting Communities Together" Project, the Tonga Community Development Trust conducted theatre performances in order to raise public awareness on racial discrimination. These theatre performances were also conducted in twenty one schools and villages reaching a total of 4181 people. Discussions and debate over discrimination were held at the end of each theatre performance and revealed that people were not always aware of existing racial discrimination attitudes to which minority communities are confronted in their daily life.

200. Human rights awareness raising programs were also carried out in schools where students were invited to reflect on human rights issues and to submit articles for publication in the local youth magazine Le'o e Kaha'u (Voice of the Future). The project has contributed towards improving and promoting tolerance among Tonga communities.

201. The CWL also conducted a four-day workshop aiming at raising people's awareness on the CERD and the CRC in Tonga. Issues addressed during the workshop included: principle standards of protection and care of the child, children's rights, family responsibilities, and analysis of misconceptions on CERD and the CRC. Approximately forty-three participants benefited from the training and expressed eagerness to share and disseminate what they had learnt through the organization and planning of other training workshops. Further to the recommendations adopted during the workshop, the organization decided to conduct additional workshops on racial discrimination.

Social and Geographical Disparities

202. Existing social and geographical disparities are not as much a result of discrimination as a reflection of resource and implementation limitations. Policy-wise, the Government of Tonga recognises that "inclusion and equality, as well as sustainability have for a long time been matters of importance to Tonga, and addressed to varying degrees in all our national plans and strategies."[66]

203. The TSDF II defines "Inclusive Growth" as: growth that allows all the people to contribute to, and benefit from, economic growth."[67] Two aspects of improving equality are (1) promoting steps to bring people into the benefits to be gained from economic growth, and mitigating steps which prevent people from participating fully in economic growth.

204. National Outcome B which targets a more inclusive, sustainable and balanced urban and rural development across islands is be achieved through (1) improved collaboration with civil society organisations and community groups (2) appropriate decentralisation of government administration with better scope for engagement with the public and (3) improved land use planning and management for private and public spaces. The result is a reduction in urban-rural disparities, reduction in poverty, establishment of district offices/councils and growth committees and implementation of constituency plans.

205. Mainstreaming of Rural Development Innovation (MORDI) Tonga Trust, under the Tonga Rural Innovation Project (TRIP), is a nation-wide project that promotes sustainable livelihood through community development. So far, it has launched 136 Community

[66] TSDF II p. 26
[67] TSDF II p. 27

Development Plans, 408 Groups Development Plans and 23 District Development Plans. Some of the completed community-based projects under TRIP include water tanks, new community hall, village boundary fencing, piggeries, jetties, Feleoko 'a Maui-'Eua Market, nursery operation and machineries. Sixteen percent (16%) of Tonga's population has benefitted from TRIP of which 23% was identified as living below the poverty line. MORDI projects identify that women and youth are the more vulnerable members of community and so are given the opportunity to participate in community development activities.

B. Best Interests of the Child (art. 3)

206. In the *Family Protection Act 2013*, and with regards to a Protection Order being issued, the best interests of the child are central to the application for and issue of a temporary and final order. It is also central to custody access and maintenance orders.[68]

207. Sections 98 and 99 of the *Education Act 2013* provide for compulsory school age of 4–18 years and for parents to ensure that the child is enrolled by age 4 and attends school regularly to age 18.

208. The *Guardianship Act* in Section 11 considers the best interest of the child where there are disputes between guardians or custodians.

209. The Maintenance of *Illegitimate Children Act* states that in the event that an illegitimate child under the age of 21 is, with the consent of the mother, to be adopted by another person, the Supreme Court in the interest of the child may dispense with the consent of the mother is the mother (a) has abandoned, neglected or per ill-treated the child; (b) cannot be found; (c) is incapable of giving her consent; or (d) unreasonably withholds her consent.

210. Tongan social organizational arrangements rank individuals within the family group. Despite the social value and protection placed upon children, they inevitably assume a much lower rank in the family hierarchy. Based on information collected during the consultations for this report it is apparent that economic and social conditions have influenced to a large extent the way decisions are made at the family level regarding children.[69]

211. Commonly decisions are made in the best interest of the family and the community and, to a limited extent, the best interests of the child. Families, community leaders and Church leaders throughout Tonga argue that the best interests of the family and the community inherently reflect the best interest of the child. The two standards are often seen as one and the same, with the best interests of the child being guarded through the best interests of the family.

212. While this principle is good in theory it does not always practically translate into a result that may be in the best interests of the child. Wide community consultations and collection of secondary data reveals that a large proportion of the Tongan population grapple with the concept of introducing rights to Tongan children. Such concepts are still believed to challenge parental responsibilities and the authority of the Church.

213. The Government believes that extensive public awareness, through various civil society organizations and church organizations, will assist in communicating culturally appropriate strategies for families, to consult children on their opinions/views, so that these maybe included during family decision making processes, especially on issues affecting the child.

[68] Family Protection Act 2013 s 9, 14, 15, 18.

[69] Government of Tonga. Central Planning Department. The Initial Report of the Kingdom of Tonga. DRAFT. Status of the Rights of the Child in the Kingdom of Tonga (2006).

C. The right to life, survival and development (art. 6)

214. Provisions of criminal law which cover murder and manslaughter and provisions of civil law which cover wrongful act or omission causing death apply equally to adults and to children as victims of such acts. However, there exist provisions in criminal legislation which refer specifically to children, including:

- Omission to perform a legal duty: Every person having in any manner whatsoever the charge of a child is under a legal duty to supply the necessaries of health and life, which includes proper food, clothing, shelter and medical or surgical treatment to the child. Any death resulting from omission to do so shall be deemed to be a death caused by an omission to perform a legal duty. If the failure to provide food or medical attendance was due to an intention to cause death or bodily injury it will be murder, but if otherwise the offence will be manslaughter by negligence only;[70]
- Infanticide;[71]
- Concealing the birth of a child;[72]
- Procuring miscarriage of woman or girl;[73]
- Woman or girl procuring her own miscarriage;[74]
- Supplying means of miscarriage;[75]
- Cruelty to children. Any person over the age of 16 years, who has the custody, charge, or care of any child (person under 16 years of age) wilfully assaults, ill-treats, neglects, abandons, or exposes such child in a manner (includes failure to provide adequate food, clothing, medical aid, or lodging for the child) likely to cause unnecessary suffering or injury to the health of the child (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of an offence.[76]

215. The leading cause of unnatural deaths in 2013 were suicide and road fatalities. Attempted suicide and inciting to commit suicide are criminal offences punishable by imprisonment.[77] Despite showing a decreasing trend,[78] numbers remain relatively high and are a notable concern for Tonga. The median age of suicide is 22 years, notably lower than in countries such as Australia. Suicide victims are typically males aged between 16 and 22[79] although they have reached as low as 12 years old.[80]

216. There are plans to decriminalise attempted suicide as people with suicidal tendencies are usually in need of treatment. The START (Suicide Trend At Risk Territories) Study Tonga Project established in 2012 under the Psychiatric Ward, formally interviewed and recorded 45 non-suicidal and suicidal self-harm cases and identified that 32 intended to die and 13 had no intention to die. The START project helps practitioners understand more about the incidence, treatment, contextual factors and follow-up of suicidal behaviour.

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[70] Criminal Offences Act Cap. 18 s 95.

[71] Ibid s 99.

[72] Ibid s 102.

[73] Ibid s 103.

[74] Ibid s 104.

[75] Ibid s 105.

[76] Ibid s 115.

[77] Ibid s 100 and 101.

[78] Government of Tonga. Ministry of Police. Tonga Police Annual Report 2013. (MOP, Nuku'alofa, 2013).

[79] Rodney, A., Hufanga, S., Paasi, S.S., Vivili, P., 'Ahio, T. and Hufanga, M. The Kingdom of Tonga Health Systems Review in Health Systems in Transition Vol. 5 No. 6 2015. Asia Pacific Observatory on Health Systems and Policies.

[80] Pacific Islands Report. "High Suicide Rate Raises Concern in Tonga". The case of a 12 year-old girl, hanging. Site accessed Wed 02/13/08. < http.//www.pireport.org/articles/2008/02/13/high-suicide-rate-raises-concern-tonga>.

217. The problem of suicide is nevertheless a multi-stakeholder issue and are in need of support. Tonga Lifeline's once thriving telephone counselling service has dwindled due to the lack of resources. Otherwise, counselling is also offered by Churches and NGOs such as the WCCC. NGOs and other organisations could benefit from assistance such as training for counsellors which in turn will ensure that counselling is absolutely confidential and sympathetic and encourage youth to seek counselling.

218. Road fatalities averaged 9 per year from 2009 to 2012. Tonga Police invests heavily in road safety awareness campaigns that include school visits, talk shows and TV programs.

219. Health-wise, Tonga has a low infant mortality rate having fallen from 15 deaths per 1000 live births in 2006–2012, to 11 in 2017. Further discussion of children's health is discussed in Chapter 6 Basic Health and Welfare.

D. Respect for the views of the child (art. 12)

220. Legislative provisions for freedom of expression are stipulated in Clause 7 Freedom of Press and Clause 8 Freedom of Petition of the Constitution of Tonga.

221. In any proceedings relating to guardianship, access, custody and customary adoption, the *Guardianship Act 2004* requires Courts to "ascertain the wishes of the child, if the child is able to express them, take account of them to such extent as the Court thinks fit, having regard to the age and maturity of the child."[81] The Government could be more proactive in facilitating and promoting the views of children throughout public discourse.

222. Traditional Tongan culture expects children to listen and obey and not question the words of their superiors, even if adults are discussing a child, or events that directly involve a child. This type of behaviour is considered being "poto", or socially appropriate. This custom is gradually changing, and young people are now playing a more important and vocal role in society.

223. Different environments were found by a UNICEF study in 2001 to have an influence on the willingness of children to express their opinions. Figure 3 shows that children felt most encouraged to express their views with their parents, while least encouraged to express their views in the community.

224. Within Youth Groups, youth and children are often encouraged to express their views, opinions and initiatives. The TNYC is very progressive in its facilitation of full participation within these groups, including the promotion of equal opportunities and interdependency for all members. This philosophy is maximised by a leadership development program which brings together youth leaders and equips them with the basic skills to assist in the personal development of youth group members, including such strategies as the promotion of subcommittees, teaming shy youth with active members, and confidence building events such as debate nights.

225. The recent interest in expression through art is popular amongst youth. On the Spot is a youth group that develops creative initiatives for community service and artistic expression. Seleka Youth also encourage unemployed youth to develop their art forms and exhibit their work in national and international exhibitions.

IV. Civil rights and freedoms

A. Name and Nationality (art. 7)

226. It is a legal requirement that every birth of a child is to be registered within 3 weeks of the date of birth.[82] Registration is free. In order to promote timely registration, the

[81] Guardianship Act 2004 s 15 (3).

[82] Births, Deaths and Marriages Registration Act Cap. 42 s 3 (2).

provision for a grace-period has been reduced from being a one-year period in 2006 to as low as three months after birth.

227. The birth certificate of a child born while the father or mother was in prison cannot state that the parent was a prisoner. A child born in prison is registered as having been born in the village nearest to the prison.[83]

228. The definition of a Tongan as stated in the *Nationality Act* was amended in 2007 to be a person born in Tonga to Tongan parents.[84] Previously, a Tongan was defined as a person born in Tonga to a Tongan father. The amendment addressed the possibility of statelessness, say for instance, of a child born abroad to a Tongan mother and a non-Tongan father.

229. The *Legitimacy Act* allows for a person born illegitimately to be re-registered as a legitimate child after the marriage of their parents. It is the duty of the parents to provide the Registrar General with the relevant information needed to obtain a re-registration of the legitimated person.[85]

230. The Registrar General's (Change of Name) Regulations 2011 states that the parents or legal guardians of a person under the age of 18 years of age may apply for the child's change of name.[86]

231. Most births in Tonga take place in hospitals which issue a certificate of live birth. Parents are expected to take this certificate to the Registrar General's Office. Midwives, traditional birth attendants or district officers are also required to report live births to the registrar.

232. Special provision is made for registration requirements in remote islands in Section 4 of the *Births, Deaths and Marriages Registration Act*. Births are reported to the Town Officer within 48 hours of the birth, and to the sub-registrar on their next visit to the island.

233. Tonga is among only a few Pacific countries to have almost complete birth registration, with an estimated coverage with registration being maintained over 98 per cent for the past twenty years. One reason for this high level of coverage is that birth registration is widely perceived as important to ensure entry to school.

234. Children who are most at risk of not being registered are those born out of wedlock, because of the stigma often attached to their birth, and those children subject to customary adoption immediately after birth. The reason in this instance is mainly due to ignorance on the law of adoption and whose duty it is to register. Registration of adopted children is also a sensitive issue because it determines rank and right to inherit. Such children may not be registered because the natural parents assume it is the responsibility of the adoptive parents, and vice versa.

235. Ministry initiatives have included the publication of information pamphlets relating to illegitimacy and the importance of registering. There is agreement that there are needs for more public education for adoptive parents, proper training for sub-registrars in the outer islands and better procedures for reporting infant deaths.[87]

B. Preservation of Identity (art. 8)

236. Currently under section 3(1) of the *Nationality Act Cap. 59*, a child may lose Tongan citizenship if their father being a Tongan citizen ceases to be a Tongan citizen. This provision does not apply if:

1. Children of the person ceasing to be a Tongan citizen are 16 years of age and above; and

[83] Prisons Act 2010 s 27.

[84] Nationality (Amendment) Act 2007 s 4.

[85] Legitimacy Act s 3 (4) 1&2.

[86] Registrar General's (Change of Name) Regulations 2011 Regulation 9.

[87] UNICEF. Summary: Regional Workshop on Enhancing Birth Registration in the Pacific, 2005. Site accessed October 2017. <http://www.unicef.org/pacificislands/BR_Report_Part 2.pdf>.

2. The children or that person ceasing to be a Tongan subject do not become, by the law of any other country, naturalized in that country.

237. Section 3(2), however, provides for the preservation of a child's identity who has ceased to be a Tongan citizen under section 3(1), if within one year after attaining the age of 16 years the child forwards a declaration in writing to the Minister of Foreign Affairs that they wish to resume Tongan nationality they shall again become a Tongan subject.

238. Section 7 of the *Nationality (Amendment) Act 2007* further provides for the granting of certificates of readmission to Tongan nationality for former Tongan subjects.

C. Freedom of expression (art. 13)

239. Freedom of expression, thought and religion are rights protected under the Constitution.

240. The Courts of Tonga have been forthright protectors of the right to freedom of expression.[88] In Taione v Kingdom of Tonga, Webster CJ defined the right as a combination of "... the allied freedoms of freedom of speech and freedom of the Press ..." and "one of the great constitutional and human rights freedoms ...". Freedom of expression is not absolute, however the only limitations that can be placed on it are the laws of "defamation, official secrets or the laws for the protection of the King and the Royal Family".[89]

241. Traditionally, children are required to listen and obey and not question the words of elders. They are not expected to intervene in the discussions of older family members. Results collected from focus group discussions found that many people in society, including children, struggle with the concept of freedom of expression.[90]

242. Tonga is recognized as having the best Youth Parliament programme in the entire Pacific region organised by the Tongan National Youth Congress. It encourages young people to become active consumers of information and current happenings in Tonga, to become interested in civic affairs and to make meaningful contributions at the highest levels of society.[91] Tongan youth were also involved in the Pacific Youth Summit for Millennium Development Goals held in Apia in May 2005.

243. Internet access has opened up a new dimension of expression. In Tonga, there has been a phenomenal increase in the use of mobile phones and the popularity of social media over the past 10 years. In 2013, around 70% of households had a fixed line connection and mobile phone ownership was at an average of three mobile phones per household.[92] High-speed broadband internet has opened up new avenues for fast access to information.[93] The penetration rate for internet users in March 2017 was 46.2% and Facebook users in June 2016 was 39.9%.[94] Thirteen percent (13%) of households surveyed in 2016 had access to the internet at home.[95]

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[88] A. McLean, Violence against Children in Tonga: Corporal punishment — Endemic and Unconstitutional (2006) Forthcoming, manuscript on file with Planning Department. Cited in Government of Tonga, Central Planning Department. The Initial Report of the Kingdom of Tonga. DRAFT. Status of the Rights of the Child in the Kingdom of Tonga (2006).

[89] Taione & ors v Kingdom of Tonga 2005 TLR67.

[90] Government of Tonga, Central Planning Department. The Initial Report of the Kingdom of Tonga. DRAFT. Status of the Rights of the Child in the Kingdom of Tonga (2006).

[91] UNDP & Pacific Islands Forum. Nuku'alofa, Tonga in Urban Youth in the Pacific. (UNDP, Fiji, 2011).

[92] Government of Tonga. His Majesty's Government of the Kingdom of Tonga. Tonga National Infrastructure Investment Plan 2013 -2023 Public Version. (PRIF, 2013).

[93] ADB. Tonga's High Speed Revolution. Site accessed October 2017. <https://www.adb.org/results/tonga-s-high-speed-revolution>.

[94] Internet World Stats. Site accessed October 2017. <www.internetworldstats.com>.

[95] Government of Tonga. Tonga Statistics Department. Tonga 2016 Census of Population and Housing Volume 1: Basic Tables and Administrative Report. (Tonga Statistics Department, Nuku'alofa, 2017) 141.

244. Facebook is popular amongst youth because it facilitates expression and communication. On the other hand, school brawls and feuds have sometimes originated from Facebook altercations. The MOP are continually developing new ways to resolve interschool fights by involving stakeholders, visiting schools and engaging school prefects to work alongside the Police as peace-keepers.[96]

245. Internet access is an essential component of education at, and beyond, the secondary school level. Few libraries have internet access, but most if not all secondary schools have a computer laboratory.

D. Freedom of thought, conscience and religion (art. 14)

246. Clause 5 of the Constitution guarantees freedom of religion. All men are free to practice their religion and to worship God as they may deem fit in accordance with the dictates of their own consciences and to assemble for religious services in such places as they may appoint.

247. There are no laws that control the number of religions that can be established in Tonga. There are 16 main religious denominations in Tonga according to the 2016 census. Some of these religious groups operate their own schools and observe their tenets and practices.

248. There is no state religion although over half (58%) of the denominations are offshoots of the Methodist church. The Free Wesleyan Church is the dominant religion with 35% of the population affiliated to this church.[97]

249. Sections 55 and 56 of the *Education Act 2013* provides for freedom of religious instruction in schools, and for Ministers of religion to visit government schools to give religious instruction. Under its principle of inclusiveness, the *Education Act 2013* provides that a child has a right to quality education irrespective of religion. Students whose denominations are not represented at the clergy visits are allowed to undertake quiet study in the library during this time.[98]

250. Generally, children share the religious affiliation of their parents and there are no known cases in Tongan where a court has had to decide between the child and a parent's religious views nor in a situation where life preserving medical intervention is contrary to the religious views of the parents or child.

251. Tonga Broadcasting Commission (TBC) guidelines require that religious programming on Radio Tonga be confined "within the limits of the mainstream Christian tradition".

E. Freedom of association and of peaceful assembly (art. 15)

252. Freedom of association and peaceful assembly are granted under the Constitution, provided the meetings are conducted peaceably and without arms and disorder.[99]

253. The Order in *Public Places Act* makes specific provisions for offences by young persons, and penalties thereof. Offences include, for those under 16, smoking or entrance

[96] Radio New Zealand. Tonga Police Work to Solve School Fights. Site accessed October 2017. <http://www.radionz.co.nz/international/programmes/datelinepacific/audio/20168652/tonga-police-work-to-solve-school-fights>.

[97] Government of Tonga. Tonga Statistics Department. Tonga 2016 Census of Population and Housing Volume 1: Basic Tables and Administrative Report. (Tonga Statistics Department. Nuku'alofa, 2017) 13.

[98] United States Department of State. 2016 Report on International Religious Freedom — Tonga, 15 August 2017, site accessed 1 November 2017. <http://www.refworld.org/docid/59b7d82e6.html>.

[99] Constitution of Tonga, clause 8.

into a public billiard saloon at any time, and for those under 14, being present in a public area beyond 8.30 at night, without the accompaniment of a parent or guardian.[100]

254. The penalties for conviction under the offences above include a nominal fine, whipping in accordance with the *Magistrates Court Act s 30*, if the offender is a male under the age of 16, or a fine of not less than $100 payable by the parent or guardian.[101]

255. Whipping is the only form of corporal punishment that is available under the criminal justice system. It is used as a deterrent and only in the most extreme cases when alternative sentences are not appropriate in the interests of the criminal justice system. Tongan courts have not yet expressly declared that corporal punishment under Tongan law is unlawful and unconstitutional.[102]

256. The *Employment Relations Bill 2013* proposes that a child who is 18 years or over has the right to join a trade union and to vote in the elections of that trade union.[103]

257. In addition to established village and church-based youth groups, there are a number of non-traditional associations that are open to membership by children such as Scouts, Girl Guides and various sporting associations. These groups coordinate their activities through either the National Youth Congress or National Sporting Associations and are assisted by the MIA.

F. Protection of privacy and protection of the image (art. 16)

258. Tongan society is structured along kinship line or extended families. Identity, fulfilment of obligation and proper familial rapport is drawn from the intricacies of the Tongan family network. A child's welfare is shared by the extended family. Privacy is an aspect of individualism, which is an inevitable by-product of migration, dispersion and displacement.

259. Although there is no specific legislation such as a *Privacy Act* to protect images of children, there are provisions in the Constitution and in different laws that protect privacy.

260. Clause 16 of the Constitution guarantees the right to protection from forcible entry and search of houses or premises except with a court issued search warrant. Section 111 of the *Tonga Police Act* protects private activities and Section 14 of the *Computer Crimes Act* protects electronic communications made through telephone, mobile phone or computers such as emails, chats or texts.

261. For any proceedings relating to guardianship, access, custody, and customary adoption of a person under the age of 18 years under the *Guardianship Act 2004*, no person shall be present during the hearing of any proceedings except, officers of the Court, parties to the proceedings, law practitioners, witnesses, any other person the Court permits. Despite this the Court may decide if appropriate to hear proceedings in private or to exclude any person from the Court.[104]

G. Access to information from a diversity of sources and protection from material harmful to his or her well-being (art. 17)

262. Legislation relating to the regulation of appropriate information for children is contained in the *Communications Act 2015* and the *Cinematograph Act* [Cap. 167]. Mandatory filtering and reporting of child pornography is prescribed by Section 108 and 109 of the *Communications Act 2015*. The act also provides for a fine of up to $10,000 or up to 3 years imprisonment for internet service providers who do not comply with the

[100] Order in Public Places Act, s 7, 8, 9.
[101] Ibid s 9.
[102] Kingdom of Tonga, Further Statement by the Kingdom of Tonga Regarding the Kingdom of Tonga's Second Universal Periodic Review Report. (2013).
[103] Employment Relations Bill 2013 s 91.
[104] Guardianship Act 2004 s 16.

provisions of the act. The *Cinematograph Act* [Cap. 167] provides for the censorship of posters, advertisements, videos or film.

263. Children in Tonga receive and have access to information from a variety of resources. In 2016, 73% of households in Tonga had a television, 13% had access to the internet at home, 88% had mobile phones and 43% had access to a battery radio.[105] These are the popular sources of information for children.

264. According to disaggregated data from the Statistics Department, just under 20% (4,078) of children between the ages 10–18 years owned a mobile phone, 85% of them having access to the internet over their phones, and the main reason (68%) for internet usage being for use of social media.

265. Access to internet is higher in Tongatapu than in outer island groups of Vava'u, Ha'apai and 'Eua. None of the Niuas have access to the internet. However, the percentage of radio access is higher in the outer islands than in Tongatapu.

266. Public libraries in Tonga are non-existent and young people are showing a general decline of interest in reading material in print. All secondary schools own a school library. Initiatives to encourage reading include a reading program offered by Tupou Tertiary Institute and a Read-with-Your-Child partnership between the World Bank and the MET.

267. Internet cafes are in high demand, especially for students who use the service to conduct internet research and print school assignments. Other modes of information include local newspapers.

268. Information directed at children and youth are broadcast through various media. These include, but are not limited to, a radio program for primary school children broadcast daily by the MET, various events, news, skits and awareness campaigns run by youth and radio talkback shows for children on Sundays.

269. The main challenge for regulating information for children is that children can access information and inappropriate media easily through mobile phones. There are mixed attitudes towards the availability of mobile phones. Many parents attribute social problems such as truancy, teen pregnancies and elopement to the ease of communication provided by mobile phones. On the other hand, caregivers are not wary of providing children with mobile phones as they help keep track of children's whereabouts.

270. Social media, Facebook in particular, is a popular source of information for mobile data users. There were 20,678 social media users in 2016 comprising 27% of the 10+ population and 61% of mobile data internet users[106]. Interestingly, rural social media users represented a greater proportion of the rural population than did urban social media users. Unfortunately, social media has been used as a form of revenge, defamation and publication of inappropriate photos and videos.

271. The Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communications (MEIDECC) is working towards drafting regulations to combat cybercrime.[107] Tonga acceded to and ratified the Budapest Convention on Cyber Crime in May 2017. Tonga's National Computer Emergency Response Team (CERT) under the MEIDECC is the Government's point of contact for cyber security issues and national level threats.

272. Initiatives such as the cyber safety technical consultation supported by UNICEF in 2015 and the Tonga Police Cyber Safety Program, need to be encouraged to ensure that children are educated on the benefits and dangers of internet usage and enhance child online protection.

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[105] Government of Tonga. Tonga Statistics Department. Tonga 2016 Census of Population and Housing Volume 1: Basic Tables and Administrative Report. (Tonga Statistics Department. Nuku'alofa, 2017) 142.

[106] Ibid.

[107] Pacific Islands Report. Tonga Looks to Laws to Curb Cyber Crime. Site accessed October 2017. <http://www.pireport.org/articles/2016/10/02/tonga-looks-laws-curb-cyber-crime>.

H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment (art. 37 (a))

273. In the Education system, physical punishment by an employee, agent or volunteer of the Ministry, Managing authority or school is prohibited by the *Education Act 2013*. This includes the verbal abuse or use of force for correction or punishment against any student.[108]

274. Under the *Education Act 2013*, a person who exercises corporal punishment is liable upon conviction to a penalty ranging of $500 for a first offence, $1000 for second offence and subsequent offence to a term of imprisonment, or both.[109]

275. There continue to be reports of incidents of corporal punishment being administered to students and brought to court as in the case of *'Uhila v. Kingdom of Tonga* Civil Case 145/91.[110]

276. Corporal punishment is still a contentious issue in the Pacific especially in the household setting. By virtue of *the Civil Law Act*,[111] the Supreme Court has affirmed the common law right of a parent to inflict reasonable chastisement on his or her child.[112] The term "reasonable chastisement" is not defined by the common law or statute. If the defense is raised by a parent in court, reasonableness must be determined on a case by case basis. In making this decision the judge, jury or magistrate can be guided by their own experience or knowledge of community standards, as well as by past court cases.

277. The *Family Protection Act 2013* was set up to ensure the safety, protection, support and redress for all victims of domestic violence and economic abuse. It also implements recovery programs for victims of domestic violence and facilitates the making and enforcement of court orders relating to domestic violence.[113]

278. A person who convicted of domestic violence is liable for 12 months imprisonment or a fine not exceeding $2000 for a first offence and 3 years imprisonment or a fine not exceeding $10,000 for a second offence or subsequent offence.

279. The Domestic Violence Police Policy drafted in 2009 sets up a comprehensive framework for the management and administration of domestic violence, Police action and response, and partnerships, and states a clear No Drop Policy to ensure cases proceed to prosecution in the magistrates' courts. Notably, if complainants wish to drop the case, the courts may order withdrawal citing that the *Family Protection Act 2013* intends to ensure that the family unit is not destroyed.

280. The Police Domestic Violence Unit works closely with various NGO's such as the National Center for Women and Children, WCCC and Salvation Army to provide counseling and shelter for victims, as well as conduct public awareness and prevention campaigns.

281. Corporal punishment as a punishment for crime is provided under various Tongan statutes.[114] In the *Magistrates Court Act*, the Courts are entitled to inflict corporal punishment on a male child aged between 7 years and 14 years upon conviction for any criminal offence in lieu of any other available punishment.[115]

282. Whipping has not been used in the Courts since the 1980's. It was ordered in 2010 but was not imposed as it was quashed on appeal.

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[108] Education Act 2013 s 37.

[109] Ibid s 44 (2).

[110] Regional Rights Resource Team. Tonga Human Rights Status. Site accessed October 2017. ttp://rrrt.spc.int/country-activities/tonga/tonga-human-rights-status/item/570-uhila-v-kingdom-of-tonga.

[111] Civil Law Act Cap. 25 s 3.

[112] *Uhila v. Kingdom of Tonga*.

[113] Family Protection Act 2013 s 3.

[114] Order in Public Places Act, Evidence Act, Criminal Offences Act.

[115] Magistrate Courts Act.

283. In the prison situation, a provision in the *Prisons Act* allowing for the application of corporal punishment by Prison Visiting Officers on male prisoners has been repealed and a prohibition on corporal punishment instated in Section 24 of the *Prisons Act Cap. 20.21*, as detailed in Chapter 8.

I. Measures to promote physical and psychological recovery and social reintegration of child victims

284. Counselling services for child victims are provided mainly by NGOs but the main social reintegration system for child victims is the family. NGOs provide temporary relief but for the long run, victims eventually need a family to settle into. During this time, staff from the relevant NGOs make occasional visits to check on the welfare and recovery of the victim.[116]

V. Family environment and alternative care

A. Parental Guidance (art. 5)

285. In Tonga it is a common belief and practice that the responsibility to raise a child lies not only with the parents, but with the family as a whole. When a child's parents are not able to care for the child, other members of the family take on that responsibility. The best interests of the child in the Tongan context rests on the child being in a supportive environment. This environment, comprising of family and community, takes full responsibility for the physical, spiritual, intellectual, emotional and social guidance and upbringing of the Tongan child.

286. Juvenile delinquency is strongly linked to the disintegration or malfunction of these vital support structures. The displacement of families in search of economic opportunities is a major cause of the disintegration of the extended family network. However, for families in displacement, support groups such as kava clubs, churches, women's groups, village-based education support groups and various NGOs contribute in different ways to the child's welfare.

287. SDG 5.6 calls for governments to ensure that all women and girls have universal access to sexual and reproductive health and rights. Proper instruction can help prepare young people for managing their freedom in a fast evolving and modern setting. Unfortunately, parents are still very much reluctant to discuss with their children issues relating to sex education, and schools do not have a curriculum for sex education. Organisations such as the TFHA and Fili Tonu are able to provide advice and training for teens in managing their sexuality.

B. Parental Responsibilities (art. 18 (1–2))

288. Parenthood qualifies as a legal duty under Section 95 of the *Criminal Offences Act Cap. 18*. Parents, caregivers, guardians are required to supply their dependants with the "necessaries of health and life". Death resulting from the neglect of care is classified as a death caused by an omission to perform a legal duty. The "necessaries of health and life" include: proper food, clothing, shelter and medical or surgical treatment.

289. Under the *Guardianship Act*, the mother and father of a child are the guardians of the child, unless the mother of the child has never been married to the father or her marriage to the father of the child was dissolved before the child was conceived, in which case the mother is deemed to be the sole guardian.[117] Responsibilities of a guardian include the custody of a child and the right of control, which includes rights, powers and duties in

[116] Personal Communication, Lesila To'ia, Community Education Team Leader, WCCC. October 2017.
[117] Guardianship Act 2004 s 4 (1).

respect of that child and its upbringing.[118] The welfare of the child is paramount to matters relating to the child.[119]

290. It is the parents' duty to have the child educated and attend school as the child reaches compulsory school age.[120] It is an offence for parents to neglect these duties.[121] A School Attendance Officer has the powers to enforce the provisions for school attendance.[122]

291. For working parents, the duty of childcare is taken up by a close relative or by a paid caregiver. There are only a handful of day-care centres in Nuku'alofa. Government's focus is on the establishment of Early Childhood Education (ECE) which starts at the age of four.

292. Between birth and entry to ECE, working parents make their own childcare arrangements. Children of pre-school age (0–4) comprised 12% (12,499) of the total population of Tonga in 2016. Despite this being a drop from 2011 (13,499), it is imperative that measures be taken to support childcare at the pre-ECE age.

293. The *Employment Relations Bill 2013* provides for maternity leave of 30 consecutive days, or up to three months should the mother not feel fit to resume work. It also provides for nursing breaks with hours counted as hours worked.

294. Participants in public consultations expressed the need for child welfare to assist in meeting educational and health obligations for their children.

C. Separation from parents (art. 9)

295. Section 116 of the *Criminal Offences Act* renders liability to any person who intently entices or takes away any child under the age of 14 from their parent or legal guardian, or receives such a child knowing it has been taken or enticed.

296. Under the *Family Protection Act 2013*, application may be made by or on behalf of a complainant to the Court for a protection order in respect of domestic violence or economic abuse. The protection order may include a custody order granting temporary or final custody of any dependent child to the complainant or to another appropriate person, whichever the court finds is in the best interests of the child and for the safety and welfare of the child.[123]

297. Section 26 of the same act accords Police the power to issue a Police Protection Order and to assist complainants by way, if necessary, of making arrangements for persons at risk to find suitable shelter and obtain medical treatment or counselling services.

298. Service providers such as health practitioners and social service providers have a duty to assist persons at risk by finding them appropriate shelter and liaising with police to ensure that protection orders are applied for, obtained and enforced. Information relating to the case cannot be shared by the service providers without the consent of the complainant or person at risk.[124]

299. To this effect, the Police work in partnership with service providers such as the WCCC and Tonga Lifeline through their provision of temporary shelter. These temporary shelters are available on a 24-hours basis and victims can stay for up to months at a time depending on the arrangement of a safe permanent living arrangement. Education and counselling is provided during their residence at the safe house. The WCCC ensures that young residents can continue living normal lives while they are at the shelter. Counselling continues as a follow up when they eventually leave.

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[118] Ibid s 2.
[119] Ibid s 15.
[120] Education Act 2013 s 99.
[121] Ibid s 104.
[122] Ibid s 103.
[123] Family Protection Order 2013 s 18.
[124] Ibid s 27.

300. Government provides vital funding for the operation of safe houses but increased awareness and usage of the service means that the organisations have to rely on donations of food, funds and furnishings to sustain the service. The TNCWC safe house closed down in July 2016 due partly to the high risk imposed on the safety of staff and the lack of funding to employ security personnel.

301. Section 27 of the *Prison Act* stipulates that a child of a female prison may live with her if the child is born during the mother's imprisonment, if the child is still breast feeding, or if the child is too young to be separated for the mother. All costs are met by the mother.

302. The child may be removed from prison upon court order, upon request of the prisoner, if the child starts school, if the prisoner is transferred to unaccommodating premises or if the child poses a risk to the security and good order of the prison.

303. Traditionally if a parent or parents cannot adequately care for a child, the extended family network will care for the child. This role is usually filled by a relative close to the child such as grandparents or an aunt or uncle. Children raised in this situation, while not living with their natural parents would have contact with both parents.

D. Family reunification (art. 10)

304. The most common instance relating to the need for family reunification is where children — and sometimes a parent — reside in Tonga, and one parent lives abroad. People travel overseas with the initial intention of temporary stay but the lure of economic opportunities leads to an extended visa and/or then eventual overstaying. In June 2016, there were 2,432 Tongan overstayers in New Zealand alone.[125]

305. Reunification of families with overstaying members eventuates either through voluntary or involuntary deportation or migration of the family. Either way, reunification is hampered by the stigma of deportation or low chance of being granted a family visa if a family member is overstaying.

306. With respect to children leaving the country, there is no restriction, the only requirement being that they possess a valid passport or certificate of identification.[126]

307. A child under the age of 18 years, whose parents or whose only parent is a Tongan citizen may enter the country on endorsement from immigration once proof is provided that either parent is Tongan.

E. Recovery of maintenance for the child (art. 27 (4))

308. Legislation relating to the recovery of maintenance for the child is embodied in the Maintenance of *Illegitimate Children Act*. It provides for the issuing, cancellation, variation or suspension of an order for maintenance. Under Section 8, a person subject to a maintenance order cannot leave Tonga without the written permission of a magistrate.

309. A fine of $500 is payable for default of payment. In the event that a person refuses or neglects to obey the order or is absent from the Kingdom, the magistrate may order that the tax allotment of such person be temporarily assigned to the mother or person applying to be used in support of the illegitimate child.[127] This is only valid as long as the person subject to the maintenance order has a tax allotment, which is rarely the case for many young men.

310. A maintenance order can be issued during the process of divorce or after a decision is made. The order ceases when either party remarries.[128]

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[125] New Zealand Immigration Department. Research and Statistics. Site accessed October 2017. <https://www.immigration.govt.nz/about-us/research-and-statistics/statistics>.

[126] Passport Act Cap. 61 s 10.

[127] Maintenance of Illegitimate Children Act Cap. 30 s 12.

[128] Divorce Act Cap. 29. s 17 & s 18.

311. Data for the use of these provisions is rare, however, where a parent is absent, members of the family and community take responsibility for the child.

F. Children deprived of a family environment (art. 20)

312. Legislative provisions pertaining to the removal of children from the family environment are covered in the earlier sections of this chapter. A child can be deprived of an immediate family environment mainly by absence (death or migration) of parents, or the child's removal due to neglect or abuse within the family.

313. The only provision for orphans in current legislation is in His Majesty's Armed Forces (Operations Benefits) Regulations 2013 Section 5 where a pension is applicable to a child or children who are orphaned. Section 8 of the *Guardianship Act 2004* makes provisions for children to become Wards of the Court. An application for such an order may be made by a parent, guardian, relative of the child, the Attorney General, the child themselves guardian ad litem or amicus curiae; or any other person. There needs to be clear direction in legislation for responsibility towards infant or young orphans.

314. To that effect, Tonga does not have any state orphanages or foster homes for the care of children deprived of their family environment through the death of their parents. Community-wise, orphaned children are affectionately absorbed into the extended family. Otherwise, access to a safe house can be made through referrals or direct contact with the centre. Various church groups and NGO's also provide support for children who may be deprived of their family environment.

315. The extended Tongan family has traditionally ensured that children are not deprived of a family environment. However, the traditional Tongan family is undergoing gradual change, and the extended safety net previously offered by the family particularly where family groups live together within a particular village is being dissipated by migration and the creation of urban suburbs in Tonga where neighbours have no familiar or traditional link to each other.

316. Of concern is the reported placement of children into the Mental Health Unit at Vaiola Hospital in circumstances where they are displaying difficult behavioural problems at home and/or school and the parents feel that they cannot control or handle the child. While not all of these children may be admitted, some will stay at the Mental Health Unit as a "revolving door patient" which is based on the principal of providing respite care. While respite care would be better handled through a facility such as a half-way house, this type of resource is not currently available in Tonga.

317. The ward has separate sleeping quarters for children, but for other activities, they share common facilities. The Children's ward has a maximum capacity of 4 children; 2 males and 2 females. The sleeping quarters are separate for each gender. If there are two patients of one gender they are required to share sleeping quarters. Resource constraints however mean that the living quarters are very basic — with only a bed and a mattress provided.

318. On average there are 6 to 7 children per year who are treated as a "revolving door patient", while on average 2 to 3 children are admitted to the Unit every year. Persons of the age of 17 or above are placed in the adult ward.

319. While children have separate sleeping and recreational areas from adults in psychiatric care, the only time that children do not mix with adult patients is at night for sleeping. This is of particular concern when some of the adult patients have severe mental conditions, and violence between patients and other patients and security personal is not uncommon.

320. Children of school age in the Unit are assigned school work by the Social Worker. This work is usually provided by the school at which the child normally attends. Sometimes a child's teacher will visit them in the Unit to assist with school work requirements. There is a nurse assigned to the Children's ward 24 hours per day when children are present.

G. Adoption (art. 21)

321. Current legislation provides only for the legal adoption of an illegitimate child of which applicants are issued an order of adoption. Applicants for adoption of a legitimate child are issued an order of guardianship under the *Guardianship Act 2004*. This is to preserve the "legitimate" right of the child which holds in situations of land inheritance.

322. Recently, due to more stringent national security laws for protection against terrorism guardianship orders have not been recognised as giving "adoptive parents" legal custodial rights over a child. Countries such as the USA and Australia do not recognise the legal guardianship order.

323. Public complaints to the Government have resulted in an exercise between MOJ and UNICEF to review Tonga's practices and legislation on customary and formal adoption including a consideration of signing up to the Hague Convention on Adoption. The review will ensure that the law gives children the utmost protection to safeguard their human rights and centralises the best interests and development of the child in adoption processes.

324. The Government of Tonga is committed to amending any practices and legislation in line with the provisions of the CRC. The Government of Tonga is examining the possibility of becoming a member of the 1993 Hague Convention on Adoption.

325. Presently, all matters of adoption are dealt with through Court. Under these proceedings, the Court must regard the welfare of the child as the paramount consideration in any proceedings where any matter relating to the custody, guardianship or access to a child, or the administration of any property belonging to the child.

326. The Court must also ascertain the wishes of the child, if the child is able to express them, and take account of them to such extent as the Court thinks fit, having regard to the age and maturity of the child.[129]

327. Section 6 of the *Guardianship Act* states that the Court may make a guardianship order in favour of a person who has had customary adoption of the child. A customary adoption may occur notwithstanding that the agreement was not in writing, but can be inferred from discussions or conduct; and a parent of the child has a continuing relationship with the child.[130]

328. Most adoptions in Tonga occur through customary practices. It is often not until the parents of a child adopted through these means wants to establish inheritance or migration rights for their child that a formal process of legalizing the adoption will occur.

H. Illicit Transfer and Non-return (art. 11)

329. The *Criminal Offences Act* states that any person who, with intent to deprive any parent or guardian of any child under the age of 14 years of the possession of such child, unlawfully takes or entices away or detains such child, or receives such child knowing it to have been so taken or enticed away is liable upon conviction to imprisonment for any term not exceeding 5 years.[131]

330. Any person who shall take or cause to be taken any girl being under the age of 14 years out of the possession, and against the will, of her father or mother or any other guardian, shall be liable on conviction to imprisonment for any term not exceeding 5 years. Consent of the girl is not a defence to any prosecution brought under this section.[132]

331. The Kingdom of Tonga is not a party to international conventions protecting children from illicit transfer such as the Hague Convention on the Civil Aspects of International Child Abduction. However the Courts of Tonga have, through the common law of the United Kingdom, taken a firm stand on the illicit transfer of children.

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[129] Guardianship Act 2004 s 15.

[130] Ibid s 6.

[131] Criminal Offences Act Cap. 18 s 116.

[132] Ibid s 129.

332. In 2003 the Supreme Court of Tonga affirmed the judgement of Cross J in re H (infants) [1965] that "it is the duty of all courts in all countries to do all they can to ensure that the wrongdoer does not gain an advantage by his wrongdoing [the sudden and unauthorised removal of children from one country to another]." In this case the Supreme Court issued an order for the return of a child to Australia who had been illicitly transferred to Tonga by the Australian mother in violation of Australian law.[133]

I. Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39)

333. A major advancement in the protection of women and children's rights has been the enactment of the *Family Protection Act* in 2013. Previously, cases of child protection were handled mainly under the *Criminal Offences Act* and the *Guardianship Act 2004*.

334. Cruelty to children under the age of 14 is explicitly stated in Section 115 of the *Criminal Offences Act*. It holds liable anyone over the age of 16 years who wilfully assaults, ill-treats, neglects, abandons, or exposes such child or young person, or causes or procures such child or young person to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause such child or young person unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement).

335. An amendment in 2003 added prohibition against an act of, or related to, child pornography.[134]

336. Under the *Guardianship Act 2004*, the Supreme Court may, on application by the other parent or by a guardian or relative or, with the leave of the Court, by any other person, deprive a parent of the guardianship of his or her child if for some "grave reason" the Court deems the parent to be unfit to be a guardian of the child or is unwilling to exercise the responsibilities of a guardian.[135]

337. Furthermore, an application may be made to the Court for an order that any child (under the age of 18 years) be placed under the guardianship of the Court, and a person be appointed as the agent of the Court either generally or for any particular purpose. This application may be made by a parent, guardian, or relative of the child; the Attorney General; the child, who may apply without guardian ad litem or as amicus curiae; or any other person, with the leave of the Court.[136]

338. On conviction of a male person for incest or attempted incest with a female person under the age of 21 the Court may by order divest the offender of all authority over the female victim, including the removal of guardianship if the offender is her guardian. The Court may then appoint a person to be the girl's guardian during her minority or any lesser period.[137]

339. The objectives of the *Family Protection Act* are to ensure the safety of all persons experiencing or witnessing domestic violence, provide support and redress for victims of domestic violence and economic abuse, implement recovery programmes for victims and facilitate the making and enforcement of court orders and Police Safety Orders.

340. A child is defined by the act as a person under the age of 18 years.

341. It has clear provisions relating to protection orders, engagement of Police, health and social services, preventative measures, offences and penalties and procedures for lodging complaints.

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[133] Government of Tonga. Central Planning Department. The Initial Report of the Kingdom of Tonga. DRAFT. Status of the Rights of the Child in the Kingdom of Tonga (2006).

[134] Criminal Offence Act Cap. 18 s 3.

[135] Guardianship Act 2004 s 9.

[136] Ibid s 8 (1) & (2).

[137] Criminal Offences Act Cap. 18 s 132.

342. The act further establishes a Family Protection Advisory Council and a Family Protection Trust Fund. The Council is tasked with advising and making recommendations to the Minister in matters relating to the safety of domestic victims. The fund is established to assist shelter and safe houses, community awareness programmes, counselling and healthcare service, transportation and any other related activities.

343. There is no clear picture of the national status of child abuse in Tonga due to the lack of statistical data on this issue. However, anecdotal evidence, media coverage and data from social service providers are sufficient indicators that child abuse is a significant issue in Tonga. Child abuse cases at the WCCC have averaged at 53 cases per year between 2012 and 2016.

344. The intrinsic nature of abuse and cultural stigmas, combine to place a number of barriers on the reporting of child abuse both at home and at school. Embarrassment and shame are a major reason why children do not report corporal punishment.

345. In 2010, a comprehensive Domestic Violence Response Policy introduced a consistent and standardised framework for Police response to domestic violence incidents. It sets up management and administration of the policy, defines Police action and procedures and emphasises a No Drop Policy which gives immediate priority to domestic violence complaints.[138]

J. Periodic Review of Placement (art. 25)

346. There are no provisions in legislation specifically requiring the periodic review of placement of a child.

347. A child who has been made a "ward of the court" is under the direct supervision of the Court and thus placement would be periodically and independently reviewed.

VI. Disability, basic health and welfare

A. Survival and development (art. 6 (2))

Child mortality

348. Tonga has averaged an under-five mortality rate of around 11 per 1000 as at 2016, a rate which is far lower than seen elsewhere in the South Pacific. Thus, while Tonga is on track to meet its TSDF II National Outcome C (11% or less)[139] this target will be challenging for Tonga with an already low baseline and the aforementioned issues with accurate measurement of trends in a small population with a low absolute number of events.

349. The main causes of death in children under five, babies in particular, are prematurity, sepsis, pneumonia, gastroenteritis and meningitis. Close to half of these deaths (45%) occur in the neonatal period, with the leading causes of neonatal mortality being preterm delivery (40%), congenital abnormalities (20%), infection (15%) and asphyxia (15%).

350. The TSDF target for IMR is 8% deaths per 1000 in 2018 and 5% in 2025; however, for Tonga to reduce the IMR below 11 they would need to invest in complex intensive care for premature babies, at a prohibitive cost, and this is unlikely in the immediate future considering resourcing constraints.[140]

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[138] Government of Tonga. Ministry of Police. Ministry of Police 2010 Domestic Violence Response Policy. (2010).

[139] Government of Tonga. Ministry of Finance and National Planning. Tonga Strategic Development Framework II 2015–2025. (MOFNP, Nuku'alofa, May 2015).

[140] Personal Communication with Dr Siale 'Akau'ola CEO, MOH.

Maternal mortality

351. Tonga has averaged an MMR of around 62 per 100 000 live births between 2006 and 2012 and is on track to meet MDG target 5A (51 per 100 000). While there are, on average, less than two maternal deaths per year, the most common cause of maternal death is postpartum haemorrhage, and complications from obstructed labour, puerperal sepsis and antepartum haemorrhage are also common. Further interventions, such as addressing a shortage of midwives and obstetricians in a number of health facilities, and treatment and prevention of gestational diabetes and pregnancy-induced hypertension, will need to be addressed to further reduce preventable deaths.

B. Children with Disabilities (art. 23)

352. People and children with disabilities in Tonga are among the poorest of the poor and are often living in vulnerable situations due to being excluded from education, employment and health care systems.

353. Significant steps towards development of a more inclusive society include:

- The development of an IE policy by the MET;
- The completion of the National Disability Identification Survey (NDIS) by the TRCS in June 2006 and a further survey planned for 2018;
- The establishment of non-government disability self-advocacy organizations;
- The establishment of the Government's Social Protection and Disability unit.

354. The 2006 NDIS was initiated to collect necessary data and information to enable government and non-government stakeholders to be more supportive and inclusive of people with disabilities in Tonga. The project identified 374 children with disabilities, however these figures were considered to be very conservative as a large number of people with disabilities, particularly children were believed to be "... 'invisible' for reasons ... endemic to disability data collection in developing countries.

355. Tonga has traditionally placed most of the responsibility upon families to care for and support people with disabilities. Lack of statistical information on the status of people with disabilities hinders efforts to adequately address disability needs. NDIS made a total of 51 recommendations to stakeholders across all areas of the government and community. It is hoped that these will be progressively implemented to properly address the establishment of a more inclusive society, particularly for children with disabilities.

356. The NDIS identified that 36% of children with disabilities needed access to medical advice. Of these children 64% had never received medical advice regarding their disability. The children, and parents of children, who had never received a diagnosis or an assessment of their disability by a health professional wanted advice because they were unsure if medical treatment could improve or cure their condition.

357. There are a number of current health care and rehabilitation services for children with disabilities, including:

Surgery

358. Children with club feet are annually provided, where necessary with access to corrective surgery conducted by a team of international surgeons funded by Australian Rotary. Approximately 20 children have corrective surgery each year. "Interplast" also annually provide members from the Royal Australian College of Surgeons to conduct corrective plastic surgery for children and adults with facial deformities such as cleft palate.

Rehabilitation services

359. Children with talipes equinovarus (Club feet) are regularly treated through the physiotherapy department at the hospital. This service includes exercise and stretching regimes and serial casting.

360. Services provided by NGO's include:

- Early Intervention Program by TRCS which operates four hours a week during school terms. The TRCS faces challenges such as organisational inefficiencies and lack of formal qualifications but continually seeks international assistance to address training needs. In 2006, 15 children were enrolled in this program;
- Home Visit Program by TRCS providing social support and rehabilitation for around 40 people mostly with severe physical disabilities including muscular dystrophy and cerebral palsy;
- Respite Care, Vocational and Educational Service, Rehabilitative Home Visit Service and Provision of Wheelchairs and Making Aids by the Mango Tree Respite Centre.

C. Health and health services (art. 24)

361. The Kingdom of Tonga has had one of the best overall levels of health within the Pacific as a result of a dramatic reduction in communicable diseases and maternal and child mortality since the 1950s. It is also on target to achieve the Millennium Development Goals (MDG) around maternal and child mortality reflecting an effective primary health-care system, good public health infrastructure and comprehensive antenatal and postnatal care, immunization, water, sanitation and waste disposal programmes.

362. The government is the main financer of the health system, providing close to half (47%) of financing in 2007/2008, supplemented by a large degree of donor and development partner funding (38%) and an average of 10% of total health expenditure coming from household out of pocket payments (OOPs). Since 2000, government expenditure on health as a proportion of total health expenditure has averaged above 80%, at an average 4% of GDP and with the health sector consistently receiving a relatively large portion (12%) of total government funding.

363. Health services are provided by a network of 34 maternal and child health clinics, 14 health centres, three district hospitals and the tertiary referral hospital, Vaiola Hospital, located in the capital city, Nuku'alofa. The four hospitals also provide primary health care to the populations of their respective island groups through outpatient and emergency departments; in fact, over 90% of health services are delivered from the hospitals.

364. Tonga has workforce densities which are higher than other low- and middle-income countries (LMICs) in the Pacific but significantly below high-income neighbours, and suffers from "brain drain", particularly for in-demand medical specialists such as surgeons and anaesthetists. Key deficiencies have been filled with funding from the Australian Aid-funded Tonga Health Systems Support Program (THSSP). However, this is a costly option and a more sustainable method must be established.

365. The emergence of lifestyle diseases, particularly diabetes and cardiovascular disease, poses a huge challenge to the health system and the overall health of the nation, with an alarming 99.9% of the adult population estimated to be at moderate to high risk of developing a noncommunicable disease (NCD). Tonga was the first country in the Pacific to launch a National Strategy to Prevent and Control NCDs. However, despite many preventative strategies implemented over the past decade, NCD risk factors continue to rise. The real challenge now is for Tonga to adapt its strong primary health-care system to deal with the range of emerging issues, particularly the large financial burden associated with chronic and noncommunicable diseases.

366. Another major challenge for Tonga is ensuring that quality primary health-care services can be maintained in remote areas. Despite the MOH ascertaining that 100% of the population can access appropriate health-care services with a regular supply of essential drugs within a one-hour walk, quality and scope of services is an issue in rural areas.

Efforts to address the most prevalent health challenges and promote the physical and mental health and well-being of children.

367. Tonga has already achieved many of the health goals within its reach given the existing health spending level, and new solutions to increase the resources for both health promotion and health care are needed if the health status of the population is to be improved still further.

368. The challenge for child health will require protecting the impressive gains made so far while at the same time identifying and implementing affordable and sustainable interventions that will reduce infant mortality rate further. A review of developments in child health occurred in September 2006 and this research will help in identifying priority areas to be addressed.

369. Currently, 67% of under-five mortality is in the 0–1 age group and investments in perinatal and neonatal care are likely to be important in reducing infant mortality. Similarly, the burden of death from Haemophilus Influenza type B (Hib) infection lies almost entirely in the 0–1 age group, and the introduction in 2005 of routine childhood immunizations against Hib is one example of an affordable new intervention for improving child health.

370. The Mental Health Unit is a modern, well-kept facility. The Children's ward has a maximum capacity of 4 children; 2 males and 2 females. The sleeping quarters are separate for each gender. If there are two patients of one gender, they are required to share sleeping quarters. Resource constraints however mean that the living quarters are very basic — with only a bed and a mattress provided. On average there are 6 to 7 children per year who are treated as a "revolving door patient", while on average 2 to 3 children are admitted to the Unit every year.

371. Persons of the age of 17 or above are placed in the adult ward. Table 5 shows the number of children treated by the Unit between 1995 and 2006. While children have separate sleeping and recreational areas from adults in psychiatric care, the only time that children do not mix with adult patients is at night for sleeping. This is of particular concern when some of the adult patients have severe mental conditions, and violence between patients and other patients and security personal is common.

372. Children of school age in the Unit are assigned school work by the Social Worker. This work is usually provided by the school at which the child normally attends. Sometimes a child's teacher will visit them in the Unit to assist with school work requirements. There is a nurse assigned to the Children's ward 24 hours per day when children are present.

Reproductive health rights of adolescents and measures to promote a healthy lifestyle

373. The Reproductive Health section is responsible for providing women of childbearing age with reproductive health-care services including family planning, immunization services, antenatal and postnatal care. This section also monitors the health and development of infants and children under five through encouraging proper nutrition including breastfeeding, complete immunization and the effective care and management of childhood illnesses in the community.

Measures to prohibit and eliminate all forms of harmful traditional practices

374. Traditional healers are widely consulted in Tonga, especially for diseases that are seen to be of Tongan origin. In 2005/2006 there were estimated to be around 1000 traditional healers in Tonga — a very sizeable number considering that the MOH employs around 800 staff in total, of which roughly 600 are in clinical roles. Traditional healers are however not formally recognized as professional health providers, and there is a lack of integration and collaboration with the public health system. Traditional healers believe that disease and poor health are caused by a disturbance of relationships with gods, supernatural powers, society or the land. Healers are generally categorized by the four main areas they are able to treat: spiritual imbalances/possessions; injuries; metabolic and internal disorder; and those illnesses with no apparent causes. Healing is viewed as an energy or power which is divine and has been bestowed upon healers by the gods/spirits or passed down from generation to generation in families. Most traditional medicine treatments involve herbal

tonics, liniments, potions, massage and prayer, although each healer has their own unique treatments and remedies. The National Health Accounts made a recommendation that traditional healers should be regulated and controlled through the creation of a professional association. WHO also recommends that traditional medicine should be integrated into the national health system in combination with a national policy and regulation for products, practices and providers. These recommendations have not been progressed in Tonga to date.

Measures to protect children from substance abuse

375. The Government has recently undertaken wide review and reform of legislation governing illicit drugs, tobacco and methylated spirits. The *Illicit Drugs Control Act 2003* provides penalties of up to $1,000,000 or imprisonment for a term not exceeding 30 years or both, for persons convicted of importing or exporting any illicit drugs. Persons convicted of possessing, manufacturing, cultivate or use or supply an illicit or engage in dealing with another person for the import, export, possession, manufacture, cultivation, use, supply, transport, sale of illicit drugs, face a maximum penalty of a fine not exceeding $75,000 or imprisonment for a term not exceeding 25 years or both.

376. The *Employment Relations Bill 2013* proposes an offence of using, procuring or offering of a child for the illicit production and trafficking of drugs.

377. The MOP are responsible for the enforcement of drug law throughout Tonga, including intelligence gathering and training, the prevention of entry, drug investigation, arrests and prosecution of persons who illegally use, sell, distribute or manufacture drugs.

378. The number of drugs cases managed by the Police in 2005 totalled 58, a decrease from the 2004 total of 67 cases. 98.2% of the total drug offences detected were committed in Tongatapu. The main type of drug seized during 2005 was marijuana. On average between 2002 and 2005, persons under the age of 17 years made up 4% of total drug offenders detected.

379. While narcotic drugs such as heroin and cocaine are generally not widely available in Tonga, anecdotal evidence suggests that the availability of these drugs are increasing. A recent study of 15 to 27 year old found that the small number of respondents who had used these drugs had done so overseas, however the increasing number of deportees being returned to Tonga are believed to be contributing to the growing demand for this class of drug.

380. Between 1998 and 2001, The Alcohol and Drug Awareness Centre of the Salvation Army has assisted 6 persons for cocaine and heroin related problems. The MOP have recently expressed "grave concern" for reports that drugs have infiltrated schools in Tonga.

Measures to ensure the protection of children with incarcerated parents and children living in prison with their mothers

Refer to Special Protection Measures.

D. Social security and childcare services and facilities (art. 26 & 18 (3))

381. Tonga does not have a social security system. Instead the family unit provides support to all members of the family, including unemployed, elderly and infants. A number of formal childcare services have recently been established by private individuals. At present the Government has a retirement benefit fund for its employees, and a number of large companies also have their own individual fund arrangement for their employees. To provide a formal system of social safety net for its citizens, the Government of Tonga has embarked on national retirement benefit project. The project is a joint exercise between Government, the ILO and the UNDP, to design and assess viable national retirement benefit scheme options in line with government's goals and policies.

382. A major component of this project involved extensive consultation with interested people at public meetings throughout Tonga. What was evident from these meetings was

that most people wanted to see a retirement benefit scheme in Tonga, and that the scheme would have to be contributory.

383. About 12% of the population have some kind of health insurance.

E. Standard of living (art. 27 (1–3))

384. Tonga performs well against the basic social indicators used by UNDP and most people live comfortably by developing country standards. Poverty has generally not been regarded as a community concern. Many household incomes are supplemented by overseas remittances and the extended family network ensures that basic needs are met for most of the population.

385. It is estimated that about 5% of households in Tonga in 2001 received incomes below a Food Poverty Line of T$703 per head per year and 23% received incomes below a BNPL of T$1,466 per head per year, meaning that they experienced periodic difficulties in meeting their daily costs of living for food and other essential expenditure.

386. The percentage of households below the BNPL was highest in rural Tongatapu (28%) and lowest in Nuku'alofa (19%), but households generally were not far below the line. Analysis of the data supported "a broad conclusion that some degree of hardship, but neither deep nor severe, was being experienced in households across the Kingdom, with little bias between the urban and rural areas". Remittances play a crucial role in supporting household expenditure, especially among the lower-income households: "Remittances contributed one-quarter of cash incomes for low-income households compared to the national average of one fifth". A lack of employment and income-earning opportunities was identified as the chief cause of hardship in the Participatory Poverty Assessment.

VII. Education, leisure and cultural activities

A. Education including Vocational Training and Guidance (art. 28)

The Right to Education

387. The *Education Act 2013* recognises the right for every child to receive a quality education, the right for every child to have access to educational and vocational information and guidance, and for that information to be available in the Tongan and English language.[141]

388. Part XX ECE mandates the MET to ensure that all children aged 4 to 5 years of age have access to an ECE centre.

389. Section 111, under Special Needs and Inclusive Education, further reiterates the principle of inclusiveness, irrespective of gender, religion, socio-economic status, physical condition and location.

Compulsory Education and Attendance

390. Part XIX makes education compulsory for those aged 4–18 years old and sets up controls for attendance. It does not state a free primary education although all Government-owned primary schools, at which a majority of children attend, do not charge school fees.

391. Sections 99, 100, 101 and 103 specify measures for regulating attendance at school. Section 104 specifies the penalties imposed for offences against the said sections.

392. The MET is responsible for improving equitable access to quality universal basic education for all children of compulsory education age.

[141] Education Act 2013 s 3

Different Forms of Secondary Education and Higher Education

393. Part XXII of the *Education Act 2013* relating to Technical and Vocational Training (TVET) ensures that the Ministry provides different forms of secondary and higher education beginning at form 4. Students wanting to engage in TVET have the opportunity to attend short courses, ongoing work experience, life skills training options and other generic skills.

394. Financial assistance for students attending recognised programs are offered on application by MFAT.

Discipline

395. Section 37 of the *Education Act 2013* addresses the issue for managing school discipline provided in Article 28 of the CRC. It prohibits the administration of corporal punishment and states the penalties for committing such an offence.

International Cooperation

396. International cooperation in matters relating to education is commissioned under Part XII Higher Education, where the Ministry is required to establish links with international institutions to draw from their experience in the development of the system for higher education. Section 5 further directs the Ministry to actively seek international assistance to support educational goals and ensure reporting obligations are met.

397. Education in Tonga is provided by the Government through the MET and various Non-government agencies such as Churches and private organizations.

398. Indicators of equitable access to, and quality of, Universal Basic Education provided by the MET show that Gross Enrolment Rate (GER) for Primary school averaged 111.5% from 2011 to 2014, and for Secondary school, averaged 94.2% for the same period.

399. Average dropout rate for Year 1–8 for 2011–2014 was 13%. The 2016 Census recorded that 94% of those aged between 3 and 18 years were currently attending school. A total of 1,787 were not attending school.

400. Primary school attendance is high but dropouts tend to occur more towards aged 15. Approximately 1 out of every 4 children aged 15–19 was not attending school compared to 1 out every 18 children not attending in the age bracket 5–14. The MET is targeting the reduction of this dropout rate by 10% each year from 2016–17 onwards, and the increase of retention at the secondary school level.[142]

401. Efforts to increase retention include the franchising of technical and vocational courses from the government-owned Tonga Institute of Science and Technology (TIST) to non-government high schools across Tonga. Over 500 students, mostly males, graduated with TIST certificates in 2017.

402. The *Education Act 2013* makes provision for a School Attendance Officer within the Ministry empowered to enforce the provisions relating to attendance of compulsory-aged children. Recently, the responsibilities of monitoring attendance have been allocated to school officers in each district.

403. Non-government agencies are the major providers of secondary education and operate 29% of all secondary schools accommodating 31% of total secondary school enrolments of 14,940 in 2013.[143] The MET in 2011–12 doubled its provision of a per student subsidy to all non-government schools from T$200 per student to T$400 per student.

404. Government provides approximately 29%, and non-government agencies 71% of post-secondary education and training, which in 2013 involved 3,847 students.

[142] Government of Tonga. MET. MET Corporate Plan and Budget 2017/18–2019/20. (MET, Nuku'alofa, 2016).

[143] Ibid.

405. Total budget allocation to the MET for 2016–17 is T$45,877,400 with a major proportion being allocated to staff remuneration. Estimates for 2017–18 allocate MET T$52.6 million or 15.3% of the total recurrent budget. The bulk of the allocation again being for remuneration which is estimated to be $33.6m or 63.8% of the total budget.[144]

406. Since 2014–15, the Development budget has been doubled to assist decentralisation of management and to address staffing issues.[145]

407. MET expects to focus a major portion of spending in 2017–18 on strengthening TVET employment rates by coordinating supply and demand, as well as reviewing the whole education and skills development system.

408. Corporal punishment is prohibited by Section 37 of the *Education Act*. School managing authorities, both Government and non-government each have their own disciplinary measures against school personnel who commit an act of corporal punishment, either verbally or by force in any way against a student. Despite this, caregivers and parents still have the right to pursue justice by taking their complaints to court, an act which is not uncommon.

409. As part of anger management training for teachers, the government offers a course in counselling at the Tonga Institute of Education (TIOE) for trainee teachers. Counselling courses for teachers are also offered by non-government systems such as the Roman Catholic Education Department. The courses provide teachers with non-violent methods of discipline and behaviour reformation.

Early Childhood Education (ECE) and Inclusive Education (IE)

410. In 2013, all 71 ECE in Tonga were operated by non-government systems and private providers, with a total enrolment of 1,832. Figures indicate that enrolment rose in 2014 to 2,132 attending a total of 74 ECE centres. There were 83 registered ECE centres in 2015.[146]

411. Enrolment is low in most centres, including those found on Tongatapu, as the role of ECE and its advantages for the education of children are not well understood by the vast majority of parents and communities.[147] Studies have found that participation in some form of early childhood education has a significant effect on almost every aspect of a child's development particularly in the areas of literacy outcomes and numeracy concepts such as heights and weights.[148]

412. ECE centres are distributed amongst all island groups with most of them on the main island, Tongatapu. Access is severely limited in the outer islands and rural areas.

413. Quality is variable depending on the financial resources of the centres, the quality of ECE training the teachers are able to recruit and pay, and the quality of the teaching and learning resources they have.[149]

414. The Government provides $50 per head to assist ECE centres with teaching and learning resources. The MET also supports ECE centres under donor-assisted programs such as the PRIDE Project and in particular the TESP I and II jointly funded by Australia and New Zealand.

415. Milestones achieved through those projects include provision of external advisors, drafting of policies, development of ECE teaching qualifications, in-service training, curriculum development, provision of resources, strengthening coordination of ECE,

[144] Government of Tonga. Ministry of Finance and National Planning. Budget Statement 2017–18 (MOFNP, Nuku'alofa, 2016).

[145] Government of Tonga. MET. MET Corporate Plan and Budget 2017/18–2019/20. (MET, 2016).

[146] Emott, S. and McIntosh, R. Tonga Education Support Project II. Independent Progress Review (DFAT, 2005).

[147] Government of Tonga. MET. Tonga Education Lakalaka Policy Framework (TELPF): 2012–2017 (MET, Nuku'alofa, 2012).

[148] Brinkman S. and Vu, B.T. Early Childhood Development in Tonga: Baseline Results from the Tongan Early Human Capability Index. (World Bank Group, 2017).

[149] Government of Tonga. MET. Tonga Education Lakalaka Policy Framework (TELPF): 2012–2017 (MET, Nuku'alofa, 2012).

registration of schools and grant payment. The TIOE is in the process of completing papers for a Bachelor in ECE.[150]

416. IE was piloted in 2013 to provide access for children who suffer from some kind of disability. The aim is to mainstream inclusive education.

417. The Government partners with NGOs such as the Alonga Centre, OTA, Mango Tree Respite Centre, NATA and the TRCS to provide services for children with physical and mental disabilities by providing a small grant to assist in their delivery of services. These centres provide special education for all levels ranging from primary level to vocational level training. Even then, only a portion of the estimated total of children with disabilities is serviced by these organisations.

418. Data on disability amongst children is lacking, the latest national disability survey being held in 2006. Figures from the 2016 Census however registered a total of 4,703 children under the age of 18 classified as having a lot of difficulty or total impairment in any one of six named functions (seeing, hearing, mobility, self-care, memory, communication). Of those children, 35% or 1,651 were in the age range 5–18 years old.[151] A national disability survey is being planned for 2018 by UNICEF and the Government Statistics Department.

419. Progress on disability inclusion has been hindered by financial constraint, lack of expertise in IE and lack of priority. In relation to the lack of data, a TESP II scoping report has been withheld until a clear definition of IE is made and Principal's receive appropriate training.[152]

420. Further challenges for ECE include:

(a) Lack of attendance and lack of access to a facility;

(b) Untrained teachers;

(c) Financial insecurity as most centres depend on parental and community support;

(d) Inadequate or poor quality teaching and learning resources;

(e) Lack of community support and understanding.[153]

Primary School

421. The MET is strongly committed to the provision of compulsory primary education. Primary schools are located on every inhabited island of Tonga, which are required by law to be located within walking distance of every child of compulsory school age. "Walking distance" is defined by law as "2 miles measured by the nearest available route".[154]

422. In 2013, the Government operated 86% of primary schools and accommodated 85% of total primary school enrolments of 17,273.[155]

423. The Net Enrolment Ratio for primary schools in 2014 was 98.2% compared with 95% in 2013. This figure has fluctuated since 2012 as a result of a new cut-off birthdate for primary school entrance and lowering of the entrance age from 6 to 5 years. The transition rate from Primary to Lower Secondary was 92% in 2014, an improvement from 90% in 2013.[156]

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[150] Government of Tonga. MET. MET Corporate Plan and Budget 2017/18–2019/20. (MET, 2016).

[151] Government of Tonga. Tonga Statistics Department. Tonga 2016 Census of Population and Housing Volume 1: Basic Tables and Administrative Report. (Tonga Statistics Department. Nuku'alofa, 2017) General Tables.

[152] Personal Communication, Mrs Kalolaine Mocaki, Chief Executive Officer, MET. October 2017.

[153] Government of Tonga. MET. Tonga Education Lakalaka Policy Framework (TELPF): 2012–2017. (MET, Nuku'alofa, 2012).

[154] Ibid.

[155] Government of Tonga. MET. Report of the MET for 2013. (MET, Nuku'alofa, 2013).

[156] Personal Communication, Mrs Kalolaine Mocaki, Chief Executive Officer, MET. October 2017.

424. In 2016, of the 15,079 currently attending Primary School, 53% were male and 47% female resulting in a sex ratio of 112 males to every 100 females. Figures show that females tended to dominate in upper secondary and tertiary level education.[157]

425. Major improvements at the Primary school level over the past years have included policy development in particular raising the age for compulsory education from 6–13 to 4–18, curriculum development, new assessment mechanisms, upgraded teacher training, School-Based Management, introduction of grants schemes, provision of teaching and learning resources, improvements in school facilities and the establishment of a new Educational Management Information System (EMIS).[158]

426. Challenges to primary school education include:

(a) Inadequate support service;

(b) Coordination and management of schools;

(c) Quality of teachers and need for proper appraisal;

(d) Quality of teaching and learning resources;

(e) School facilities;

(f) Limited funding in recurrent budget;

(g) Relationship and communication between Ministry, schools and communities.

Secondary School

427. Non-government agencies have been instrumental in increasing access to secondary education, especially in Ha'apai, Vava'u and Tongatapu, through the establishment of middle schools by the Free Wesleyan Church and The Church of Jesus Christ of Latter Day Saints.

428. The establishment of government schools on the two most isolated islands Niuafo'ou and Niuatoputapu has made access to secondary education easier. The Government has a secondary school in each of the main island groups in the Kingdom.

429. Net Enrolment Ratio for secondary schools in 2014 was 79%, a drop from 10% in 2013. Dropout rates. In 2016, 14,015 were currently attending secondary school compared to 14,368 in 2011.[159]

430. Partnership with New Zealand via MET enables secondary schools to benefit from a School Grant programme for Class 1 to Form 2 which focuses on improving teaching and learning resources in schools.

431. Major achievements include policy development, upgrading programmes for teachers, upgrading school facilities, administration of grants to non-government schools, external examinations and revision of school curricula.

432. Challenges to secondary level education include:

(a) Lack of clear policy direction;

(b) Access to secondary schools especially in outer islands and rural areas;

(c) Lack of equity;

(d) Challenge to coordination and coherence;

(e) Communications;

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[157] Government of Tonga. Tonga Statistics Department. Tonga 2016 Census of Population and Housing Volume 1: Basic Tables and Administrative Report. (Tonga Statistics Department. Nuku'alofa, 2017).

[158] Government of Tonga. MET. Tonga Education Lakalaka Policy Framework (TELPF) 2012–2017. (MET, Nuku'alofa, 2012).

[159] Government of Tonga. 2016 Population Census. Statistics Dept. Government of Tonga. Tonga Statistics Department. Tonga 2016 Census of Population and Housing Volume 1: Basic Tables and Administrative Report. (Tonga Statistics Department. Nuku'alofa, 2017).

(f) Need for continuing curricula review;

(g) Need for appropriate assessment instruments;

(h) Need for clear outcomes of education;

(i) Inadequacy of data and information;

(j) Untrained teachers;

(k) Need for upgrading of resources and facilities.[160]

Post-secondary education

433. Post-secondary education is shared between Government and non-government providers who offer a wide variety of programs ranging from life skills training to both short- and long-term degree programs.

434. National Census figures from 2016 show that 370 children under 18 were attending technical vocational or tertiary institutes of which 58% were males, mostly in technical vocational institutes and 42% were females, mostly in tertiary schools.

435. The MET operates the TIOE, which offers pre-service certificate and diploma qualifications and in-service training for ECE, primary, and secondary teachers; and the Tonga Institute of Higher Education (TIHE), which offers certificate and diploma qualifications. The MET manages the Tonga Institute of Science and Technology (TIST) and the Tonga Maritime Polytechnic Institute (TMPI).

436. The MOH operates the Queen Salote School of Nursing, and provides certificate and diploma courses in other areas of health. The MOP, Prisons, and Fire Services provides basic training for their officers. His Majesty's Armed Forces (HMAF) provides its own training programme for their officers and enlisted personnel. Other Government ministries provide short-term training for staffs.

437. In the non-government sector, the Free Wesleyan Education system administers Tupou Tertiary Institute in Tongatapu, Hango Agricultural School in 'Eua, and Pouono Technical Institute in Vava'u. The Roman Catholic Church Education system also manages three institutions, namely, Montfort Technical College, 'Ahopanilolo Technical College, and St. Joseph's Business College, all of which are located on Tongatapu. There are also private providers, which include, 'Unuaki-'o-Tonga Royal Institute, and 'Atenisi Institute. Tokaikolo Christian Church claims to operate a University as does the University of the Nations, but in 2010 there were no students enrolled and neither is yet registered with the Tonga National Qualifications and Accreditation Board.[161]

438. There is little coordination amongst post-secondary education providers. Within MET, the main challenges relate to clear policy direction, need for review of current offering to identify gaps, strategies for aligning courses to needs of the country.[162]

B. Aims of education with reference also to quality of education (art. 29)

Functions and Guiding Principles of Curriculum

439. In recognition of the child's parents, cultural identity, language and national values, the following provisions are made:

(i) *Education Act 2013* Section 3(3) — the language of instruction to be in the Tongan language and the English language;

(ii) The *Tonga Education Lakalaka Policy Framework (TELPF) 2012–17* defines what "education" means in the Tongan context, that being the recognition of core

[160] Government of Tonga, MET, Tonga Education Lakalaka Policy Framework (TELPF) 2012–2017 (MET, Nuku'alofa, 2012).

[161] Ibid.

[162] Ibid.

values of Tongan society, namely, *faka'apa'apa* (respect), *lototo* (humility), *mamahi'i me'a* (commitment), and *feveitokai'aki* (reciprocity).

440. The educational curriculum is designed in such a way that, amongst many other features, recognises the uniqueness of the Kingdom, its people and its culture in providing students with the opportunity to learn about and cultivate an appreciation of Tongan values, history, culture, beliefs and traditions.[163] This is in line with the provisions of Article 31(2) of the CRC.

441. The same section also ensures that education prepares children to live locally, regionally and globally and to understand the range of political, economic and social relationships and interactions in those various settings.

442. Curriculum is developed so that from all levels (ECE to vocational), children are enabled to realise their full potential, achieve their personal ambitions and contribute to the society in which they live.[164]

443. The MET's overarching Tonga Education Lakalaka Policy Framework (TELPF) 2012–17 prioritised three out its 9 outcome objectives. These three are:

(a) Outcome Objective 02: Excellence in education, by effective and efficient administration and management of, and supporting and improving compulsory universal basic schooling (UBE) (Ages 4–18);

(b) Outcome Objective 04: Quality national educational standards for students, teachers, and teaching and learning environments, by improving existing tools and developing and implementing new and relevant standardised tools for continual improvements of the system;

(c) Outcome Objective 06: Equitable GOT and non-GOT education systems, by promoting good relationships and effective partnerships, with support to non-government education systems to improve students' outcomes.

444. Indicators for improving student learning and quality of education provided by MET are thus as follows:

(a) National Average of Tonga Passing Rate maintained mostly at one-third (33%) for all national exams which include SEE, TSC, TFSC and TNFSC. Although this is a concerning figure, this is an improvement from an average of 28 in 2012;

(b) Education attainment measured by average raw mark for the SEE was 31.2 for Maths, 53.4 for Tonga Language, 41.7 for Science and 33.0 for English. While low, these are improvements from 2011 when Maths was 27.6, Tonga Language was 48.5, Science was 44.2 and English 29.1;

(c) Pacific Islands Literacy and Numeracy Assessment (PILNA) results measuring Year 4 Literacy and Numeracy for 2015 were 52 and 79 respectively;

(d) Pupil teacher ratios in 2014 were maintained effectively at 13 for ECE, 22 for Primary and 13 for Secondary school. However, student to certified teacher ratios were higher at 23 for Primary and 21 for Secondary, and yet higher when measured against qualified teachers at 22 for Primary and 49 for Secondary;

(e) Female Primary school teachers comprised 48% of Government staff and 72% of non-government staff. At the secondary level, 50% Government teachers and 60% non-government teachers were women;

(f) Student to classroom ratio was 44 for Government schools and 66 for non-government schools;

(g) Student to toilet ratio was an average of 67 for all schools.[165]

[163] Education Act 2013 s 48.

[164] Ibid s 47 (g).

[165] Personal Communication, Mrs Kalolaine Mocaki, Chief Executive Officer, MET, October 2017.

445. The MET recognizes that underachievement in primary education, particularly, in literacy and numeracy, is one of the key challenges in its efforts to achieve excellence in education. The Ministry continues administering two standardized tests, the Tonga Early Grade Reading Assessment (TEGRA) and the Setting Literacy Numeracy Baseline Data (STATS) to monitor the status of student outcomes.

446. Further measures taken to enhance UBE include:

(a) The revision of curriculum for primary school Tongan, English, Mathematics and Science;

(b) Introduction of Creative Technology, Tongan Society and Culture and Movement and Fitness;

(c) Application of Minimal Service Standards (MSS) in schools;

(d) Implementation of students' profiles;

(e) In-service training of teachers in materials together with upgrading of school facilities and support activities.

447. The MET recognizes that there is an urgent need to develop a coherent comprehensive education outcomes-based quality control system to ensure that minimal standards are met and exceeded. Not only that but to ensure that all these efforts are coordinated under one clearly articulated synthesized system that will continue to monitor, and evaluate performance and outcomes and give policy direction and remedial recommendations for future development activities.[166]

448. One of the challenges relating to nurturing tolerance within a child has been the incidence of inter-school brawls, in particular between the male students of secondary schools on Tongatapu. The difficulty is that between some schools, rivalry has existed for decades and for generations and involves young school alumni. History has shown that inter-school enmity can subside for years and then emerge and last for several years until it wears out again. On occasions, fighting has reached the extent of casualties and destruction of public and private property.

449. In order to bring an end to the rivalry, government, in particular the MOP, and non-government stakeholders have joined together in a coordinated effort to create peace and understanding between schools. Reconciliation has been achieved by creating opportunities for student leaders to work together through school visits, peace-keeping activities, prefect and leadership workshops, as well as activities for their guardians and ex-students.

Cultural rights of children belonging to indigenous and minority groups

450. As a signatory to the CERD, Tonga is obliged to encourage a spirit of peace, tolerance and understanding between cultures and ethnic groups. Even then, children are encouraged to participate not only in the cultural activities of Tonga, but also in the cultural activities of other countries and minority groups.

Education on human rights and civic education

451. Education on human rights and civic education is limited within the curriculum, to subjects such as History, Social Science and Tongan Culture and Society. Otherwise, education is minimal.

C. Leisure, recreation and cultural activities (art. 31)

452. Tongans are total advocates of their culture and traditions. Parents take pride in the proper engagement of their children in events, dances, dress codes, rituals, conduct and etiquette of Tongan culture.

[166] Government of Tonga, MET, Tonga Education Lakalaka Policy Framework (TELPF) 2012–2017 (MET, Nuku'alofa, 2012).

453. The children of Tonga have the inherent right to freedom of leisure and recreation and are often seen playing games of rugby or netball on numerous sports fields and cleared blocks or beaches. The MIA administrates the Sports Division which mainly provides support for local sporting events.

454. While culture and tradition are still a very important part of life in Tonga, globalization and the increase in overseas migration potentially place Tongan culture at risk of being eroded. The government however is committed to the preservation, promotion and enhancement of Tongan culture as an important aspect of maintaining a distinctive national identity.

455. The MET introduced in 2012 two new subjects, Movement and Fitness and Tongan Society and Culture to be taught in primary school to year 8 with the aim of enhancing a healthy lifestyle as well as valuing local culture.

456. The Ministry organises various annual nationwide primary school sports programme involving athletics, netball and rugby ball-skills and competitions, as well as cultural events. Of the latter events, schools traditional dances, including the UNESCO-recognised cultural masterpiece, the lakalaka, are taught and performed by students.

457. The Ministry partners with non-government organisations such as Tonga Sport for Development Program, THPF and other local sporting organisations to encourage physical activity. Recently, the Ministry invited the Tonga National Rugby League (NRL) to implement a six-week rugby league program in the primary schools to promote healthy lifestyles.

458. One of the challenges relating to leisure is children's access to a playground or large grounds for safe outdoor play. This is particularly evident in the Greater Nuku'alofa area where young boys can be found playing touch in the middle of the road, or where available open spaces are dangerously close to the main road. There are very few public playgrounds.

459. Other Government departments are also instrumental in cultural preservation including the Tonga National Centre, administered by the Tourism Visitors' Bureau, which offers traditional dancing classes for children, Tongan floorshow competitions, and compositions and singing competitions. The Ministry of Agriculture, Food, Forestry and Fisheries provides cultural development workshops for women and girls in rural and outer islands. These workshops have concentrated around the preparation of mats and tapa for traditional customary activities and celebrations.

VIII. Special protection measures

A. Children in situations of emergency

(a) Refugee children (art. 22)

460. No children or person has applied for refugee status or requests for temporary protection. Tonga is not a member of the UN Convention on Refugees 1951.

461. In the event that children were to seek refuge in Tonga, the following provisions in the *Nationality Act* may be used for their protection:

(a) The King may grant letters of naturalisation to any foreigner who applies on humanitarian grounds;[167]

(b) The King may in his absolute discretion, in any case which he thinks fit, grant a certificate of naturalisation to any minor (person under 16 years of age) despite not fulfilling any conditions of the *Nationality Act Cap. 59*.

[167] Nationality (Amendment) Act 1986, s 8B

(b) Children in armed conflicts (art. 38) including physical and psychological recovery and social integration (art. 39)

462. As previously identified, HMAF does not enlist children under the age of 18.[168]

B. Children in conflict with the law

(a) Juvenile justice (art. 40)

463. There is no distinct treatment for juvenile offences in the Tongan criminal law context. There is no specific legislation relating to juvenile justice, juvenile court or juvenile corrections facilities.

464. A person can be tried for criminal offences at the age of seven. Actions of children between the ages of 7 and 12 are not considered an offence unless a Court or jury decides that they have attained sufficient understanding of the nature and consequences of their conduct in relation to the act of which they are accused.

465. In any proceedings under the *Guardianship Act 2004*, a Court may appoint a law practitioner to represent any child who is the subject of or who is otherwise a party to the proceedings.[169]

466. The Attorney General's Office acts as Guardian Ad Litem in adoption or legal guardianship cases and divorce proceedings or in cases where there is concern over the welfare of the children such as in the case of Rex v Sione Kalavini Lolohea CR 58 of 2016. The Court rarely appoints an attorney to represent a child as they usually conduct informal bench hearings to ascertain the wishes of the child. Otherwise, children appearing in the Magistrates' Court do not have legal representation.

467. The Tonga Supreme Court Rules 2007 O.9 Rule 7 states that a minor may commence and prosecute proceedings through a next friend and may defend proceedings by a guardian ad litem. Before the proceedings, the next friend or guardian ad litem must file with the court a written consent to act together with a certificate by a lawyer representing the child certifying that the person acting has no interest in the action in question adverse to the interests of the child.[170]

468. A minor (person under 21 years) who has been served a pleading must make application to the Court by application notice for directions as to whether they should be appointed a guardian ad litem.[171]

469. Tonga does not have a Legal Aid system. *A Legal Aid Bill 2013* was proposed in 2013 but was deferred, when it was tabled in Parliament, for further consultation.

470. One of the implementation projects of the *Family Protection Act 2013* is the establishment of a Legal Aid Centre for survivors of Domestic Violence in Tonga. Tonga's Community Legal Aid Centre was opened on the 12 March 2018 as a partnership between the Regional Rights Resource Team of the South Pacific Community and the MOJ.

471. The Supreme Court's Family Jurisdiction applies the principles of the CRC in the cases brought before it. At the Magistrates' Court level, where most cases involving juvenile offenders are heard, the CRC was used for the first time in August 2006 by the Chief Magistrate as a guide to sentencing of a child. In April 2013, the Court of Appeal referred to Article 21 of the CRC on inter-country adoption and asserted its relevance as a "measure of last resort". In September 2016, the Court of Appeal, applied the principle of best interest of the child to allow the appeal for inter-country adoption in the case of Leger & Leger v Solicitor General.[172]

[168] Tonga Defence Services Act, s 25.
[169] Guardianship Act 2004, s 7.
[170] Tonga Supreme Court Rules 2007 O 9 Rule 7.
[171] Ibid.
[172] https://crownlaw.gov.to

472. While this is a positive development, many of the Magistrates are unaware of the provisions of the CRC. The Government would appreciate technical support from development partners like UNICEF to conduct trainings and awareness with the magistrates.

473. Under statute there are specific provisions ensuring the protection of children within the legal system. For example:

474. Proceedings in-camera. All proceedings in relation to the offences of Enticing or taking away children, Rape and attempted rape, Carnal knowledge of girl and attempt to have carnal knowledge of girl, Indecent assault, Indecent assault on a child, Procuring the defilement of females, Abduction of girls, Incest by male person, Incest by female person, whether heard in the Magistrates' or Supreme Court, may be held in camera.[173]

475. This provision does not, however, apply to the offences of sodomy or indecent assault on a man, hence there is no legislative provision providing for proceedings to be held in camera for a male child who is the victim of rape or a male child (between the age of 12 and under the age of 18) who is the victim of an indecent assault.

476. The *Magistrate's Court (Amendment) Act 2012* Section 19 however states that in criminal cases against children under the age of 16, the clerk may list these to be heard separately if the Court considers it appropriate to do so.

477. Questioning of children. Section 151 of the *Tonga Police Act 2010* states that a relative, friend or law practitioner chosen by the child be present during the process of questioning, and provides for privacy of the conversation.

478. Orders restricting publication. In any proceedings relating to an offence of rape, the presiding Judge or Magistrate may, or if application therefore is made by the complainant or the Prosecutor, shall, make an order directing that the identity of the complainant and her evidence taken in the proceedings shall not be published in the Kingdom in a written publication available to the public or be broadcast in the Kingdom.[174] The presiding Judge or Magistrate must, at the first reasonable opportunity, advise the complainant of her right to make an application for such an order.[175]

479. As the offence of rape only specifies a female victim, this legislative protection would not apply to a male child who is the victim of rape.

480. Children are not generally imprisoned. The Salvation Army provides counselling and mentoring programs for child offenders referred to their program by Courts. The Lifeline Tonga program, despite its limited resources, has occasionally provided temporary housing for young male child offenders whom Police have been unable to hold on remand, and whom other centres have refused to house.[176] In addition, services of the Probation office and the Youth Diversion Programme, discussed further in section (d) of this chapter, provide pre-emptive measures to prison sentencing.

(b) Deprivation of liberty (art. 37 b, c, d)

481. In 1990, amendment to the *Criminal Offences Act Cap. 18* provided for the introduction of community service orders.[177] In 1999, further amendment provided for the introduction of a probation system in Tonga.[178]

482. These are two important mechanisms of the legal system used for the sentencing of young offenders often under the supervision of a Child Welfare Officer who counsels them while they are serving their probation. The Probation Office is a small office which has been identified as a priority area for the Ministry to develop.

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[173] Criminal Offences Act, Cap. 18 s 141.
[174] Ibid s 119 (1).
[175] Ibid s 119 (2).
[176] Personal Communication, Rev 'Ikani Tolu, Head Lifeline Tonga, October 2017.
[177] Criminal Offences (Amendment) Act 1990 s 3.
[178] Ibid s 2.

483. The Probation Office works in close cooperation with Town Officers and various non-government organizations, in particular the Salvation Army Drug and Alcohol Awareness Centre, the NCWC and the WCCC.

484. A paper prepared by Kuli (not dated) describes the rehabilitation services provided by the Government for young offenders.[79] These include the services of the Probation office and the Youth Diversion Programme (YDP). The Probation office is charged with the preparation and pre-sentencing reports as directed by the Court; arrangement and supervision of Community Work, co-ordination and supervision of the Youth Diversion Programme, counselling, supervision of Probation orders and outreach programmes for youth.

485. The YDP was set up after the riots of November 2006 with the objective of diverting juvenile criminal issues from court, enabling offenders to develop a full understanding of the harm they have caused, enabling offenders to participate in repairing the harm and increasing community involvement in the justice process and the restoration of peace and harmony in Tonga.

486. The Probation office works closely with NGOs such as the TNYC, Legal Literacy, the CWL and the Salvation Army Drug and Alcohol Centre, WCCC and the NCWC in providing rehabilitation programmes for both offenders and victims. Unofficial restorative justice is available via the community at large which facilitates reconciliation and assimilation of the offenders into society.

487. The challenges faced by the Government youth rehabilitation programmes are a limited national budget, a traditional trust in the sentencings of a court rather than a programme, lack of legal infrastructure, peer influence, problematic families and lack of staff. The main challenges related specifically to the Probation and Youth Justice Division include high workloads, lack of training, limited budgets, absence of legislation, administrative challenges, data collection and inadequate security.[80]

488. There are five prisons in Tonga, located in Tongatapu, Ha'apai, Vava'u, 'Eua and Niuatoputapu. The prison system is managed under the *Prisons Act 2010* and guided by the United Nations Minimum Standard Rules for the Treatment of Prisoners. In 2014, juvenile prisoners (under 21) constituted 9.7% of the total prison population.[81]

489. The *Prisons Act 2010* provides for the separation of prisoners under the age of 18 from others who are 18 years or older. They will be kept where practicable and suitable facilities exist.[82] However, due to budgetary and resource constraints none of the prison populations are classified or segregated. Persons on remand are mixed with convicted criminals and children are mixed with adults.

490. There is currently no separate juvenile detention facility in Tonga. Any child committed to prison will serve their sentence in the general population. This is clearly an area of concern, especially as the Prison Department reports that "[p]risoners mixed in the mainstream are vulnerable to learn more crime than effective rehabilitation".

491. The Prisons Department attempts to place most children on 'Ata Prison Island, which is a small island off the north coast of Tongatapu, accessible by small boat only. This island has accommodation for 6 prisoners who spend their time tending to gardens and fishing. The island is supervised by one prison officer on a rotational basis. There we no children (inmates) placed on 'Ata Prison Island as at November 2017.

492. An extension to Tonga's prison was completed in 2010 to comply with UN Minimum Standard Rules for Treatment of Prisons, and to cater for overcrowding.

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[79] Kuli, Loupua (not dated) Effective Measures for the Treatment of Juvenile Offenders and their Reintegration into Society.

[80] Kivalu, T. F. (not dated) Stress Management System in the Probation and Youth Justice Division, Kingdom of Tonga. Paper prepared for 145th International Training Course Participants Papers.

[81] Prison Studies. Tonga. Site accessed October 2017. <http://www.prisonstudies.org/country/tonga>.

[82] Prisons Act 2010 s 18(3).

493. Information has been received that some children have been held on remand for a significant period of time at the Nuku'alofa Central Police Station (facility consists of a simple police lockup). For example, a 14 year old boy charged with attempted rape was held on remand in the police lock up for 3 months.

(c) Sentencing of juveniles, prohibition of capital punishment & life imprisonment (art. 37 a)

494. Under the *Criminal Offences Act* Cap. 18 the death penalty is available for the offences of treason and murder. Section 91(1) of the Act provides that the sentence of death shall not be pronounced on or recorded against any person under the age of 15 years.

495. Section 66 of the *Prison Act* prohibits the application of mechanical restraints, corporal punishment, torture or cruel, inhumane degrading treatment or subjecting prisoners to punishment that may adversely affect their physical or mental health.

(d) Physical & psychological recovery & social reintegration (art. 39)

496. At present, there are no government facilities or services to assist victims of crime and victims of abuse. Reliance must be placed on services provided by a number of NGOs to which government provides a financial contribution to their operations.

497. Victims of domestic violence are sometimes advised by police to seek assistance from the WCCC, which provides counselling and a safe house for victims as required. Other potential sources of assistance are the CWL, the Salvation Army Drug and Alcohol Centre and the Free Wesleyan Church's Lifeline Service.

C. Children in situations of exploitation & physical, psychological and social reintegration

(a) Economic exploitation (art. 32)

498. There is currently no legislation that specifically prohibits child labour, however, clause 2 of the Constitution prohibits forced or bonded labour in general.

499. Official data on child labour is lacking although the latest 2016 Census records that a total of 317 children under the aged of 18 were engaged in paid employment in either the public or private sector.

500. Government approved in May 2016 the progression of the *Employment Relations Bill 2013* for approval and enactment. In line with the fundamental principles of the ILO, this Bill proposes the following conditions relating to the CRC:

(a) Specific protections for persons under the age of 18 years including prohibitions against:

(i) The worst forms of child labour;[83]

(ii) Engagement in hazardous work as stated by the Hazardous Child Labour List;[84]

(iii) Employment in work detrimental to their health or affecting their attendance at school or training;[85]

(iv) Employment during school;[86]

(v) Employment in hard labour;[87]

[83] Employment Relations Bill 2013, s 88 (1)
[84] Ibid s 87 (1)
[85] Ibid
[86] Ibid s 86 (1)
[87] Ibid s 85 (1)

(b) Minimum age of employment is 14 years, under which only light work may be taken;

(c) An employer of children must keep a register of all children, including various particulars.[188] This register is to be inspected by the labour inspector;

(d) A child who is 15 years of age or over has the right to join a trade union.[189]

501. Two of the ILO's eight core Conventions relate to protection of children; i.e. C138 — Minimum Age Convention and C182 — Worst Forms of Child Labour Convention. Both are priority Conventions considered for ratification by the end of current FY.[190]

502. Children are extensively involved in "non-economic" activities within the household. Activities included cooking, cleaning, shopping, minor household repairs and caring for the sick and younger children. Children aged 10–14 spent an average of 11 hours a week in total on these and other household activities, compared to the adult average of 22 hours a week.[191] Children's activities are a norm of the Tongan household and typically do not affect their attendance at school.

503. The positive aspect of children's involvement is that they master local skills at an early age. But more importantly is that they learn social skills which help them to integrate into, and contribute confidently to, the extended family and community. These social skills enhance their awareness of the moral mainstays of traditional Tongan society.[192] The negative effect is the possible loss of time for leisure.

504. Economic hardship has led to the incidence of children as young as 5 years old vending peanuts and snacks during school hours and into the late hours of the night around the Nuku'alofa area. Concern about this has been raised publicly[193]. Both Police and Education officers have intervened to ensure that these young children are removed from the streets.

(b) Drug abuse (art. 33)

505. The Government has recently undertaken a wide review and reform of legislation governing illicit drugs, tobacco and methylated spirits.

506. The *Illicit Drugs Control Act 2003* lists illicit drugs and controlled substances, provides for regulation of their possession, manufacture, cultivation, use or supply. It also establishes criminal offences and penalties for the regulations mentioned.[194]

507. The *Employment Relations Bill 2013* proposes an offence of using, procuring or offering of a child for the illicit production and trafficking of drugs.[195]

508. The MOP is responsible for the enforcement of drug law throughout Tonga, including intelligence gathering and training, the prevention of entry, drug investigation, arrests and prosecution of persons who illegally use, sell, distribute or manufacture.

509. In 2013, the Alcohol and Drug Coordination (ADC) program was established under the MOP to coordinate alcohol and drug issues between police, other government agencies

[188] Ibid s 90 (1).

[189] Ibid s 91.

[190] Personal Communication, Ms Kolotia Fotu, Deputy CEO, Ministry of Commerce, Consumer Trade, Innovation and Labour, October 2017.

[191] Government of Tonga, Tonga Statistics Department, Report on the Tonga Labour Force Survey 2003 (Tonga Statistics Department, Nuku'alofa, 2004) 36.

[192] The Conventional Right of the Child in the Tongan Context, Expert Working Group (2017).

[193] CRC Public Consultation Vava'u 2017, FM87.5 Radio Talkback shows, Facebook site accessed October 2017. <https://www.facebook.com/photo.php?fbid=1635068800131504&set=a.1447282728910113.1073741830.100008851984881&type=3&theater>.

[194] Illicit Drugs Control Act 2003.

[195] Employment Relations Bill 2013 s 88 (1).

and NGOs. The objective is to ensure a whole of government approach is taken to reduce the negative impact of alcohol and drugs in society.[196]

510. The ADC works closely with the National Crisis Center for Women and Children, Center for Women and Children, Domestic Violence Unit, Liquor Licensing Authority, the National Alcohol Sub-committee, Community Policing and Traffic Section. The ADC provides policy advice, research, training, dissemination of information and coordinates and supports projects. It also attends alcohol and drug issues forums and liaises between government agencies, bodies and NGOS involved in the drug and alcohol domain.

511. Crime statistics from the MOP report a 43% rise of illicit drugs-related offences from 70 cases in 2014–15 to 100 in 2015–16.[197] Drugs cases handled by Police in 2005 totalled 58. Main types of drugs in Tonga include marijuana, cannabis and methamphetamine. Anecdotal evidence suggests that the availability of these drugs is increasing. The increasing presence of deportees is believed to be a contributing factor to the growing demand of these drugs.

512. The *Intoxicating Liquor (Amendment) Act 2010* prohibits the sale of liquor to, or admission to a bar or nightclub, of children under the age of 18. A fine of up to $1,000 is payable by those convicted.[198]

513. Sale of methylated spirits to persons under 18 years is prohibited. Any person convicted can carry a fine of up to $10,000 or imprisonment for up to 3 years.[199]

514. Alcohol abuse is of increasing concern in Tonga. The amount of alcohol consumed by children have been found to vary considerably, with restrictions usually relating to financial limitations.

515. In a recent survey, children generally reported that all the alcohol available at any one time was consumed, i.e. the whole bottle of Bounty, the whole case of beer, the whole bucket of home brew. This points to binge rather than controlled drinking, and there were many reports of respondents or their friends getting "over drunk".[200]

516. The MOP partners with organisations such as the Salvation Army Alcohol and Drug Awareness Centre and THPF and churches provide a range of services in relation to alcohol abuse such as awareness training, referral service and rehabilitation.

517. MOP reports that although offences against the *Intoxicating Liquor Act* dropped from 2014–15 (29 out of 172 cases) to 9 cases in 2015–16, offences relating to Manufacturing of Intoxicating Liquor more than doubled for the same period from 35 to 82.[201] Data from the 2016 Census show that 522 or 2.5% of children under 18 reported drinking alcohol.

518. The domestic cost of kava, a popular and affordable traditional intoxicant, has drastically risen in the past two years to the extent that it has affected headline inflation[202]. There are instances of kava drinkers, in particular young men, reverting to homebrews or alcohol to fulfil their desires for intoxication.

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[196] Tonga Ministry of Police. Alcohol and Drug Coordination Unit. Site accessed <http://www.police.gov.to/index.php/initiatives/92-alcohol-and-drug-coordination.html>

[197] Government of Tonga. Ministry of Police. Ministry of Police Annual Report 2015–16. (MOP, Nuku'alofa, 2016).

[198] Intoxicating Liquor Act, Cap. 84 s.65

[199] Methylated Spirits (Amendment) Act 2010 s.11 (1)

[200] Government of Tonga. Central Planning Department. The Initial Report of the Kingdom of Tonga. DRAFT. Status of the Rights of the Child in the Kingdom of Tonga (2006).

[201] Government of Tonga. Ministry of Police. Ministry of Police Annual Report 2015–16. (MOP, Nuku'alofa, 2016).

[202] National Reserve Bank of Tonga. Headline Inflation driven by domestic price of kava. National Reserve Bank of Tonga Economic Release June 2016 at http://www.reservebank.to/index.php/108-news/economic-indicators/387-ir-june16.html. The price of kava powder in 2015 was $25–$30 TOP per kilo. By 2017, it had risen to $150 a kilo.

(c) Sexual exploitation and abuse (art. 34)

519. The *Criminal Offences Act [Cap. 18]* provides specific legislative protection for children from sexual abuse including:

(a) Carnal knowledge of a girl (under the age of 15 years);[203]

(b) Indecent assault on a child (under the age of 15 years);[204]

(c) Procuring the defilement of females and girls (under the age of 21 years) to have unlawful carnal connection; or to leave her usual place of abode in the Kingdom with intent that she may become an inmate of or frequent a brothel within or without the Kingdom;

(d) Procuring defilement of females and girls (under the age of 21 years) by threats, intimidation or by the administration of a drug to have unlawful carnal connection within or without the Kingdom.

520. The importation, distribution, sale and production of any pornography is prohibited in Tonga. In July 2003, the *Criminal Offences Act Cap. 18* was amended to include specific offences for the publishing, production or possession of any child pornography. This provision provides for a maximum penalty for an individual of a fine not exceeding $100,000 or imprisonment for a period not exceeding 10 years or for a corporation of a fine not exceeding $250,000.556.

521. The *Communications Act* introduced in 2015 makes it mandatory for internet service providers to filter content accessible by internet that relates to child pornography, and to report details of child pornography to the Police.[205]

522. No offences of child pornography have been detected in Tonga.

523. The exact incidence and prevalence of child sexual abuse and incest is difficult to establish due the sensitivity of the issue. Sexual offences for 2015–16, which included rape and attempt, carnal knowledge of girl under age and attempt, indecent assault including child and male and incest, appear to have dropped from the previous year. Indecent assault alone comprised 55% of all sexual offences. The MOP reports that sexual crimes are under-reported and that NGOs tend to report a higher number of offences than Police records.[206]

524. Resource constraints inhibit the work towards research on the causes of sexual exploitation and abuse in Tonga. Because sexual abuse is considered "taboo", cases of sexual abuse in the family will often not be reported for fear of bringing "shame" to the family.

525. Counselling services offered by the WCCC and TNCWC maintain confidentiality and protection of identity to make it easier for children to lodge complaints. Unfortunately, some of these cases are retrospective as victims only find courage to speak out as they grow older and have less fear for the perpetrator.[207]

(d) Other forms of exploitation (art. 36)

526. As above.

(e) Sale, trafficking and abduction (art. 35)

527. The trafficking of children to, from, or within Tonga has not been detected.

528. The *Employment Relations Bill 2013* proposes a specific prohibition on the sale and trafficking of children. *The Criminal Offences Act* [Cap.18] specifically prohibits the abduction of women and girls (under the age of 14 years). Consent of the girl is not a

[203] Criminal Offences (Amendment) Act 2012 s 121.

[204] Ibid s 122.

[205] Communications Act 2015 s 109.

[206] Government of Tonga. Ministry of Police. Ministry of Police Annual Report 2015–16. (MOP, Nuku'alofa, 2016).

[207] Personal Communication, Lesila To'ia, Community Education Team Leader, WCCC. October 2017.

defence to any prosecution brought under this section. These offences carry a maximum term of imprisonment of 7 and 5 years respectively.

529. Furthermore, any person who unlawfully takes or entices away or detains a child (under the age of 14 years), or receives such child knowing it to have been so taken or enticed away is liable upon conviction to imprisonment for any term not exceeding 5 years.

Children in street situations

530. The incidence of children roaming the streets is limited mainly to young peanut sellers as mentioned above (Children in situations of exploitation & physical, psychological and social reintegration).

E. Children belonging to a minority or an indigenous group (art. 30)

531. Tonga does not have any ethnic minorities but there is a growing population of overseas immigrants, Chinese in particular. These groups have the same freedom of religion, association, language and education as Tongan nationals. As second-generation migrants, Tongan-born Chinese children show a greater degree of assimilation into the Tongan culture than their parents. By having to attend school, they generally have a better grasp of both the English and Tongan language and have a wider network of Tongan acquaintances than their parents do.